OFFICE SUPREME COURT U. S.
FILED
JAN 2 1903
JAMES H. McKENNEY, Clerk

IN THE

Supreme Court of the United States.

[No. 914.]

SOUTHERN EXPRESS CO., - - - *Appellee*,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO., *Appellant*.

COPIES OF PLEADINGS, MOTIONS, OPINION AND DECREES, IN U. S. CIRCUIT COURT, AGREED BY THE PARTIES TO BE PRINTED ON MOTION TO DISMISS APPEAL.

ST. LOUIS: PRINTED BY THE CENTRAL LAW JOURNAL.

IN THE

Supreme Court of the United States.

[No. 914.]

SOUTHERN EXPRESS CO., - - - *Appellee*,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO., *Appellant*.

COPIES OF PLEADINGS, MOTIONS, OPINION AND DECREES, IN U. S. CIRCUIT COURT, AGREED TO BE PRINTED ON MOTION TO DISMISS APPEAL.

BILL OF COMPLAINT.

The Southern Express Company, a corporation created under and pursuant to the laws of the State of Georgia, brings this, its bill, against the St. Louis, Iron Mountain and Southern Railway Company, a corporation created under and pursuant to the laws of the State of Missouri, and owning and operating a railway in the district aforesaid:

And thereupon your orator complains and says:

I. Your orator, the Southern Express Company, is a corporation duly created, organized, and now existing under the laws of the State of Georgia, for the purpose, and with the powers necessary thereto, of receiving and forwarding upon railroads, steam vessels, and other vehicles of rapid transportation, in a safe and secure manner, and with the greatest practical expedition, in the special care and custody of its own employes, and at destination personally delivering packages of money or currency, gold and silver bullion, bonds, bank-notes, deeds, and other valuable papers, jewels, silks, laces, and other articles of great value, requiring for their security extraordinary care and precaution, and also parcels of goods, wares, and merchandise, requiring great dispatch or careful handling; and also fruit, vegetables, fresh meats, fish, oysters, fish spawn, and other articles liable to decay or other injury from delay: and also live animals requiring particular care and attention during transportation; and also for receiving and forwarding for collection bills, notes, drafts, and accounts, and receiving and returning payment thereof; and also for receiving and forwarding all articles of trade and commerce, with the bills and charges of the shipper thereto attached, to be collected of the consignee on delivery of such articles, and returned to shipper; and in so doing, to afford the public, under a single contract, and on assured responsibility, safe, reliable, and speedy transportation from and to all points accessible only over two or more railroads, and generally to perform for the public all offices that by usage are incident to the class of carriers now well known, recognized, and designated by the public as "express carriers."

II. Your orator further avers that railroad companies, by reason of the limited extent of their lines and powers, and the extraordinary care and attention demanded, and the peculiar and immense hazard, and other difficulties and embarrassments incident thereto, were not only unwilling, but

unable to perform for the public this kind of transportation and service in a manner as efficient and with as responsible assurance of safety and dispatch, as the necessities and convenience of the public demand, but, by usage, have surrendered the same to be performed by express companies, organized and equipped especially therefor, and by long custom and usage, as well as in respect to their lawful right thereto, have accorded to express companies for a reasonable compensation the means and facilities upon their lines for doing this kind of transportation.

III. The express business, first organized in the United States about the year 1839 between Boston and New York, has grown to such dimensions that, extending now over all of the States of the Union and Canadas, and to Europe and the West Indies, it is carried on by over one hundred and sixty different express organizations, meeting the requirements of the public in the localities in which such business is transacted, and occupying therefor, without molestation and with the free permission of the railway companies, nearly every prominent railway line in the United States. Such express companies have, in the aggregate, as your orator is informed and believes, an investment in capital and equipment of over $30,000,000, and such amount, as your orator is also informed and believes, and therefore avers, is not incumbered by mortgage or other lien, and constitutes, at all times, a fund amply sufficient to secure the public against any probable loss of its property while in the custody of the express companies; and which security is not afforded, as your orator is informed and believes, by any railway company in the United States.

IV. All of said express companies, as your orator is informed and believes, have invested their capital and built up their business upon the express understanding with the railway companies that they would voluntarily afford all the

facilities needed by the express companies as the representatives of the public for the transaction of its business, or upon the knowledge and belief that the public, whether demanding such facilities in its individual capacity, or through the express companies as its representative, had a legal right to compel the granting thereof by those who had been created by the public and for the public. No railroad company in the United States, to the knowledge of your orator, has ever refused to transport express matter for the public, upon the application of some express company, of some form of legal constitution. Every railway company, so far as your orator is advised, has recognized the right of the public to demand transportation by the railway facilities which the public has permitted to be created, of that class of matter which is known as express matter, and no railway company, to the knowledge of your orator has ever had the ability to assume, as between itself and the public, such obligations for the transportation of such matter as are universally assumed by the express companies toward all who treat them with frankness.

V. The principal public demand for the existence and use of an express company has been as a medium of exchange of money and the collection of negotiable securities and the transportation of express packages of greater or less value, or of packages the price or value of which was to be collected from the consignee at the time of delivery, and remitted to the consignor. The public has always demanded in the transaction of its business of this character, an undoubted financial responsibility on the part of the carrier, known integrity on the part of the employes, and the invention and application of all moral and mechanical safeguards which ingenuity and experience could devise or suggest. It has also required instrumentalities for the primary collection and subsequent delivery of express matter for the relief of the public generally in that regard. This demand has

been made with full knowledge on the part of the public of the capacity and responsibility of existing railroad, steamboat, and stage companies, and was, and always has been a demand for facilities and security, which those companies did not afford.

VI. The government of the United States, as the representative of the public, has, for the reasons aforesaid, availed itself of the facilties and security afforded by the express companies, to an extent sometimes larger and almost always equaling the demands of the general public. The laws of the United States now in force permit the use of the mails for the transportation of moneys and of many articles which are known as express matter, at what are called "third-class rates," and the railway companies of the country, unless forbidden by their charters, have also instrumentalities for the transportation of moneys and securities from point to point; but neither the government of the United States nor the public generally have ever used, to any appreciable extent, either the mail or railway facilities for the transmission of such moneys and securities. The express companies have been created by the public, as their instrumentalities for the transmi-sion as well of public as of private moneys, as aforesaid, and the necessity for the existence of such instrumentalities is as great as the necessity for the existence of the ordinary vehicles of commercial intercourse; and in receiving, transmitting, and delivering express matter for the public, the express companies act as the agents of the public, giving that attention to the collection, transmission, and delivery thereof, which neither the public nor the railway companies can give.

VII. Before the commencement of hostilities in the late civil war, the Adams Express Company, a joint stock association, under the laws of the State of New York, was engaged in carrying on the express business in all the Southern States,

and upon all the principal railroads therein, and was then possessed of a large and valuable equipment necessary for the conduct thereof, and had created and built up for itself a valuable business therein, and had possessed and enjoyed the good will of the public in respect thereto. For controlling reasons of a public character, then generally known, the said Adams Express Company was compelled to withdraw from the said Southern territory, and it thereupon, in or about the month of July, 1861, sold and transferred to your orator, the Southern Express Company, its said equipments, business, and good will in the several Southern States, to-wit, in Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and a portion of Tennessee. And thereafter such business was, in the said several States, owned, possessed, enjoyed, and carried on by the said Southern Express Company, in the like manner as the same had been theretofore conducted by the said Adams Express Company.

VIII. For the use of the equipment and the enjoyment of the good will aforesaid, the said Southern Express Company, in the conduct of its said business, was afforded all the facilities necessary therefor, by all the principal railways in said States, over which the business of the public required the said Southern Express Company to extend its lines. And from time to time the Southern Express Company enlarged and extended its aforesaid business upon and along the lines of the several railroads thereafter built in the territory aforesaid; and for the dispatch of its business so extended, provided, at great expense, skillful and faithful servants, safes and packing chests, peculiarly suited to the safe transportation and storage of money and valuable packages; wagons, horses, and trucks, for collecting, transferring, and making delivery of express matter; and erected at various railroad stations permanent offices and warerooms; and established lines of rapid communica-

tion, and fixed and published tariffs of charges between all accessible points in said Southern States. And thence, hitherto, having conducted said busines for a period of nearly twenty years, it has, at great expense of money and energy, built up in said territory, and now owns and enjoys therein an express businessof great value, and by its faithfulness to, and zeal for the interests of the public, and by the fairness and promptness with which it has performed its obligations, and by the reasonableness of the charges it has always made, it has earned and now enjoys an enviable and widely advertised reputation for responsibility and promptness, and has secured the confidence of the public, and thereby a good will and commercial standing of great and inestimable value to your orator in the business aforesaid; and all of which constitutes its property.

IX. Your orator would further show that said defendant is duly furnished and equipped with light, durable cars, especially constructed, and intended to be attached to their passenger trains, and used for the transportation of express freights, and express messengers in charge thereof, and is also equipped with all other means and facilities necessary to your orator for carrying on its express business as aforesaid.

X. Your orator further avers that heretofore, and on the third day of March, 1851, the St. Louis and Iron Mountain Railroad Company was duly incorporated under and pursuant to the laws of the State of Missouri, and thereafter owned and operated a line of railway from St. Louis in a southerly direction, extending the same, from time to time, until it reached the boundary line between the States of Arkansas and Missouri aforesaid, and which said line is now owned and operated by the said defendants under the consolidations hereinafter mentioned.

XI. And your orator further avers that the said St. Louis and Iron Mountain Railroad Company subsequently, and on the 30th day of April, 1872, entered into an agreement in writing with the said Adams Express Company, in reference to the transaction by the said express company of the express business over so much of the lines of the said railroad company as were then in operation, and which said contract was in the words and figures following, to-wit:

"Memorandum of agreement made the 30th day of April, A. D. 1872, between the St. Louis and Iron Mountain Railroad Company, of the first part, and the Adams Express Company, party of the second part, witnesseth:

The St. Louis and Iron Mountain Railroad Company agree to furnish the said Adams Express Company one-half of the baggage car on each of its passenger trains on main line and branches for carrying express freight; not to be loaded with over seven thousand pounds (7000) at any one time; and it is further understood that the express company shall have the use of part of the baggage car on accommodation trains between St. Louis and Potosie, to an extent not in excess of the amount allowed on passenger trains.

It is understood that each of said cars shall run each way daily on the passenger trains, and no charge shall be made for Sunday, so long as the only night passenger trains are used on Sunday.

It is further agreed by the St. Louis and Iron Mountain Railroad Company that it will prohibit its conductors, agents, and baggage-masters from transporting on its passenger trains, or from accepting compensation for any matter except extra baggage; and, further, the said railroad company agree they will not permit any person or company to do an express business on their passenger trains on any better terms, or for any less payment, than that given the Adams Express Company.

For and in consideration of the service herein named, the said express company agree to pay to the St. Louis and Iron Mountain Railroad Company one hundred and twenty-five dollars per day, and a proportional increase per day for every ten (10) miles of road operated by them on extension

of road for the transportation of its messengers with safes and packages, chests, and an average amount of freight not exceeding ten thousand ponnds (10,000 lbs) per day, and for all freights in excess of the above amount per day they agree to pay the said railroad company once and a half its regular first class rates for freight as per freight tariff, but not to exceed seventy-five cents per 100 lbs. for through freight from St. Louis to Columbus, Kentucky. It is further agreed, that for all extra cars said express company may require, the said express company shall pay first class freight rates for all freight carried in them.

The express company agree to carry all money and other valuables for the same railroad company to and from points on the line of its road free of charge, and for such matter as may be sent to, or received from, points off the line to charge the railroad company not exceeding two-thirds the rate charged the public.

The railroad company to be exempt and indemnified by said express company against all loss or damage to goods or money transported by said express company.

Settlements are to be made on or before the tenth day of each month for the business of the preceding month.

This contract to remain in full force one year from the 1st day of May, 1872, and thereafter until thirty days notice shall be given by either party to the other of its desire to discontinue the same.

In witness whereof the president of the St. Louis and Iron Mountain Railroad Company and the superintendent of the Adams Express Company have this day affixed their signatures.

THOS. ALLEN,
Prvs. St. L. & I. M. R. R.

XII. And your orator further avers that in the year 1874 there was existing in the State of Arkansas a railway corporation duly organized under the laws of said State, and known as the Cairo and Fulton Railroad Company, and owning and operating a line of railway between Cairo and Fulton aforesaid: and also in the State of Missouri a cor-

poration known as the Cairo, Arkansas and Texas Railroad Company. On the first day of February, 1874, the said Cairo and Fulton Railroad Company and the said Cairo, Arkansas and Texas Railroad Company, entered into a contract with your orator in reference to the transaction of the express business over the lines of the said two railways, and which said contract was a continuation or modification of certain contracts theretofore existing with reference to the transaction of the express business over the lines of said railways, and which said contract of the first of February, 1874, was in the words and figures following, to-wit:

"Memorandum of agreement made this first day of February, 1874, by and between the Cairo and Fulton Railroad Company, of Arkansas, and the Cairo, Arkansas and Texas Railroad Company, of Missouri, as party of the first part, and the Southern Express Company, of Georgia, as party of the second part. Witnesseth:

The said party of the first part agrees to furnish the party of the second part one-third of the room in the baggage car on each passenger train over the Cairo and Fulton Railroad, and the Cairo, Arkansas and Texas Railroad, for the carriage of express matter not to exceed six thousand pounds per day in each car.

It is understood and agreed between the parties hereto, that no conductor, baggage-man, or other railroad agent of said companies, shall be allowed to transport on passenger trains (or receive any compensation therefor) any matter except extra baggage. That no other person or express company shall be permitted to do express business or convey matter on passenger trains, on any better terms or for less compensation than those given to, or required of the party of the second part.

It is further agreed between the parties hereto that the party of the second part will pay to the party of the first part fifty dollars per day for the transportation of its messengers, with safes and package chests, and an average amount of express matter not to succed six thousand pounds per car over the Cairo and Fulton Rrilroad, and ten dollars

per day for similar privileges and accommodation over the Cairo, Arkansas and Texas Railroad Company, it being understood that payment for service on the latter road shall commence when the express company shall place its messengers thereon. For all express matter carried in excess of 6,000 pounds on any one train, the same shall be charged twentyt-five cents per hundred pounds per hundred miles, any excess matter carried less than one hundred miles shall be charged as for one hundred miles.

It is further understood and agreed between the parties hereto that the express company is to carry all money packages and valuables for the railroad companies herein named to and from points on the line of said road free of charge. It is understood that where the parties to this agreement employ one and the same person as joint agent, the receipt of the express messenger on the train for such money packages, etc., alone shall constitute a delivery to the party of the second part, and the receipt of the party to whom such packages are addressed shall in such cases be necessary to constitute a delivery to the party of the first part.

For such express as may be sent to or received from points off the line of the roads named herein, the express company is to charge not exceeding two-thirds of the rate it would charge the public. The railroad company is to be exempt from, and the express company shall indemnify it against all loss and damage to goods or money transported by said express company.

When, by reason of accident, or other cause, the railroad companies, or either of same, are unable to provide the facilities herein agreed to be furnished each day, then no charge shall be made against the express company for such non-service.

The car room allotted to the express company is to be lighted and warmed by the railroad companies.

In cases where the agent of the railroad companies is employed by the express company as its agent, and it is practicable, the depots of the party of the first part may be used free of charge by the party of the second part, and room or space will be accorded on the right of way or premises of the railroad companies free of charge for the express company to erect offices thereon.

Settlements under this contract are to be made by the express company on or before the 10th day of each month for the business of the preceding month.

The express company will be entitled to one messenger on each train, and the officers of the express company travelling on its business will be carried free of charge. This contract to remain in force until terminated by either party giving the other sixty days notice of its intention to thus withdraw therefrom.

In witness whereof, the president of the C. & F. and the C. A. & T. R. R. Companies, and the general superintendent of the Southern Express Company have hereunto set their hands the day and year aforesaid.

(Signed,) M. J. O'BRIEN,
For Southern Exp. Co.

(Signed,) THOS. ALLEN,
For C. & F. R. R. Co.

(Signed,) THOS. ALLEN,
For C. A. & T. R. R. Co.

XIII. Your orator further avers that the said St. Louis and Iron Mountain Railroad Company and the said Cairo and Fulton Railroad Company and the said Cairo, Arkansas and Texas Railroad Company were duly, and according to law, consolidated on the 16th day of May, 1874, under and by the name of St. Louis, Iron Mountain and Southern Railway Company, the defendant herein, and thereafter conducted and are now conducting and operating a line of railway between the cities of St. Louis and Cairo aforesaid, and Fulton aforesaid, and Texarkana, on the boundary line between the States of Texas and Arkansas aforesaid.

XIV. Your orator further avers that the said Adams Express Company and the said Southern Express Company continued, after the said consolidation, severally to enjoy all the rights, privileges, and facilities granted by the two contracts aforesaid, and until on or about the first day of April, 1878, when the said Adams Express Company, with

the assent and permission of the said defendant, relinguished to the said Southern Express Company the transaction of the express business over so much of the lines of the said defendant as had been embraced in its contract of the 30th of April, 1872, with the Adams Express Company, hereinbefore set forth, and thereafter the entire express business over the lines of the said defendant's railway has been and is now daily conducted by the said Southern Express Company.

XV. Your orator further avers, that for the transportation of its express matter over the lines of the defendant and of its predecessors, the Southern Express Company has paid the sum of $505,761.89, a large portion of which was paid to said railway company for the transportation of express matter not local to the defendant's line, but going to or coming from points beyond the termini of defendant's railroad, and mostly to or from other States of the Union. And your orator avers, upon information and belief, that the said Adams Express Company, during the existence of its relations with the said defendant, paid to it a proportionate amount for similar express service.

XVI. Relying upon the duty and obligations impossd upon said railway company by law, and the conditions of its enjoyments of its franchises, as well as by the contract aforesaid, to afford to your orator for a reasonable compensation equal and indiscriminate opportunities and facilities of transportation of the kind, and to be enjoyed in the manner demanded by the convenience and necessities of the public, and established by the usage and custom of said railroad company, and all other railroad companies in like cases, your orator made large investments of money in building up its business at said stations and along and upon said railroad, and in establishing other and connecting routes for business to be transported beyond the lines of said rail-

road, and in advertising the same to the public; and by such investment, and its energies expended through a long time, to secure to the public the facilities of safe and rapid dispatch to any and all places, and to itself the confidence and patronage of the public, it has built up, and now owns and enjoys, an express business and prestige and good will thereto, upon said line, of great value to your orator, by reason of the tolls and profits thereby accruing to your orator.

XVII. Being thus organized and established in the said Southern States, after the close of the war, the Southern Express Company entered into an arrangement now in force with the Adams Express Company, for the general regulation of the transportation of property daily coming from the territory of the one, into the territory of the other, and by which property received by the Adams Express Company, destined for points within the territory of the Southern, and property received within the territory of the Southern destined to points within the territory of the Adams Express Company, or reached by its connections, is daily interchanged at certain specified points and upon a basis of charge proportioned to the distance traversed in the territory of either. In case of such interchange of express matter within such teritory, the express company originally receiving the same remains liable to the public for the value thereof until delivered to the consignee.

XVIII. Since the said understanding and arrangement, the Southern Express Company has made such interchanges with the said Adams Express Company, and now makes the same daily at Richmond, Lynchburg, and Norfolk, Virginia; Chattanooga, Tennessee; Cairo, Illinois; Paducah, Kentucky; and St. Louis, Missouri; and has not, itself, since then, either delivered or received express matter north of such points, but the territory south thereof has been operated by the said Southern Express Company alone. By this

arrangement, the said express companies have been enabled to extend to the public the advantages and facilities of a continuous and most speedy line of transportation for express matter through the several States in which the said companies carry on their business, and, by the aid of other responsible express companies, throughout the entire United States, under a single bill of lading, assuring the safe delivery of such express matter over all the connecting lines upon which it is carried to its destination.

XIX. The said Southern Express Company now owns and controls an express business properly and most expeditiously to be conducted over the said defendant's railway, sufficient to guarantee to the said defendant tolls or earnings in the future as great or greater than those heretofore paid it as aforesaid, to the like pecuniary benefit of the defendant, as it has heretofore received.

XX. Your orator further avers, that according to the usage and business of express companies, your orator has provided wagons and horses, drivers, iron safes, and other conveniences with which it collects and delivers on the trains of defendant, express matter, using its own means, agencies and appliances alone about the same, until the same is actually delivered on the defendant's trains; and likewise using solely its own means and agencies in transporting and delivering such freights after they leave defendant's trains.

XXI. And your orator further avers, that it frequently has occasion to forward over defendant's line large sums of money, for which the defendant, having its property heavily mortgaged to secure existing debts, affords no adequate or prompt security or indemnity in case of loss; and so the safety of your orator and the defendant, as well as their convenience, has demanded, and the defendant, according to the usage of railroad traffic in such cases, has accorded

the means and facilities to your orator of forwarding such sums of money in the special care and custody of your orator's own agents; and otherwise your orator would be practically denied the opportunities of safe transportation of said sums of money over defendant's line, intended by the creation of the defendant as a common carrier for the public, to be afforded to the public. The defendant's railway is mortgaged, as your orator is informed and believes, to the extent of over $30,000,000.

XXII. Your orator further avers that its interest, and the preservation of its valuable property and good will, demands that it shall continue to have and enjoy the daily means and facilities aforesaid heretofore by the defendant accorded as aforesaid; and for the use and enjoyment thereof, your orator is always ready, and hereby offers to pay such just and reasonable compensation, and to conform to such just and reasonable rules and regulations as may be lawfully required and imposed by the defendant. Your orator is advised and believes, and therefore charges, that by reason of the premises hereinbefore recited, and by force of the general statutes of the State of Missouri in such case made and provided, and to which reference is hereby had, the duty is now imposed upon the defendant to always afford to your orator, as one of the public, the means and facilities upon its railway, of forwarding and transporting, in the manner established as aforesaid by the usage of the express business, upon reasonable terms and under reasonable regulations, its express matter and messengers.

XXIII. And your orator further avers, upon information and belief, that, within a short time, certain persons have sought and obtained from the legislature, or under the authority of the laws of the State of Arkansas, a charter, or other incorporating act, for a new express company, called "The Mississippi Valley Express Company," and have per-

fected the organization of an express company thereunder; and that such organization was suggested and promoted by parties interested in the said defendant's company, and for the purpose of favoring the same on the lines of the said defendant's railway, and to the exclusion therefrom of the said Southern Express Company, and to the total destruction of its business thereon, and of its property therein.

XXIV. And your orator further avers that the first information which it had of the formation of said new company, and of the intent of the promoters thereof to destroy the business of said Southern Express Company, was contained in a letter sent by the said defendant to the said Southern Express Company, in the words and figures following, to-wit:

"ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY.

GENERAL SUPERINTENDENT'S OFFICE,
ST. LOUIS, *March* 26, 1880.

M. J. O'BRIEN, ESQ., *General Superintendent Southern Express Company, Memphis, Tenn.:*

DEAR SIR:—This company has come to the conclusion that it is to its interest to terminate the contract made with you on February 1, 1874, and have directed me to give you the notice contemplated in said contract, which will terminate the same sixty days from this date. Other arrangements have been made, and, if desirable to you, can turn it over at an earlier date.

Personally, I regret to sever the pleasant relations existing for many years with yourself and officers, and hope for a continuance of the same between yourselves and your successors.

Very truly,
A. W. SOPER,
General Superintendent."

XXV. Your orator caused the said letter to be answered in the words and figures, following, to-wit:

"SOUTHERN EXPRESS COMPANY (EXPRESS FORWARDERS).

OFFICE OF THE GENERAL SUPERINTENDENT,
SAVANNAH, *April* 1, 1880.

A. W. SOPER, *General Superintendent St. Louis, Iron Mountain and Southern R. R., St. Louis, Mo.:*

DEAR SIR:—Yours of the 26th ultimo, directed to Memphis, Tennessee, reached me here this morning, and I must confess that, in view of the pleasant business relations which have existed between our respective companies for several years, I am surprised at the notice proposing to terminate the same.

I will thank you to inform me what other arrangements have been made which, in the judgment of your company, rendered dissolution with ours necessary, and would also ask whether the same terms and privileges which may be accorded to others can not be extended to this company, so as to permit the continuation of its business on your lines.

I expect to be in Nashville on or about the 5th instant, and will be gratified to have your reply directed to that point.

Reciprocating the personal regard which you are pleased to express,

I am, respectfully,
M. J. O'BRIEN,
General Superintendent."

XXVI. Your orator further avers that it received a telegraphic reply to its said letter, in the words and figures following, to-wit:

ST. LOUIS, *April* 5, 1880.

M. J. O'BRIEN, *General Superintendent Southern Express Company:*

Your letter just received. The contract has been made with other parties, exclusive, same as your own was.

A. W. SOPER."

XXVII. And your orator further avers, upon information and belief, and therefore charges that, by the "other parties" referred to in said correspondence, the said defendant referred to the said Mississippi Valley Express

Company, and that the said defendant heretofore made a contract with the said Mississippi Valley Express Company in writing, whereby it agreed to give to the said Mississippi Valley Express Company, for a definite period, an exclusive right to have, enjoy, and possess all the means, facilities, and accommodations necessary for the transacting of express business, and for the transportation of express matter over the railway lines of the said defendant, and therein covenanted and agreed not to grant over its railway to the public, generally, or to any person, firms, or corporation, other than the said Mississippi Valley Express Company, for said period, any facilities, upon equal or any terms, for the transaction of such business on its lines; and that the defendant intended, and until as hereinafter stated, in accordance with said agreement and covenant, to exclude and eject the Southern Express Company, its messengers and business, from the lines of said railway, on the 25th day of May, instant, and thereafter to deny and refuse to the Southern Express Company the means and facilities of doing said busines.

XXVIII. And your orator further avers, that in order to obviate the necessity for any litigation in the premises, and to secure by amicable means a proper recognition of the rights of the said Southern Express Company, your orator, on the 13th of April, 1880, caused to be addressed and sent to the said defendant a letter in the words and figures following, to-wit:

"ST. LOUIS, April 13, 1880.

HON. THOMAS ALLEN, *President St. Louis, Iron Mountain and Southern Railway Company, St. Louis, Mo.*

DEAR SIR:—I received, under date of March 26th ultimo, a letter, (which was promptly acknowledged) from Mr. A. W. Soper, General Superintendent, referring to the contract existing between this company and yours, and saying that he had been directed to give us notice that the same would

terminate sixty (60) days from the date of his communication, alleging as a reason therefor that "other arrangements had been made."

Recalling the circumstances attending the origin of relations between our respective companies, you will remember that for two or more years previous thereto the express business was conducted by the Iron Mountain Railroad Company on its own account, and then (doubtless for good and sufficient reasons) the privilege was accorded to our company under an arrangement effected by you and myself.

This agreement obligated us to purchase the express property then owned by your Company which we did. It also stipulated the terms upon which we were permitted to conduct the business, and further that no other person or company would be permitted to do an express business on your road on any better terms, or for any less payment, than that given us. We continued under same for several years, during which time the revenues therefrom were insufficient to pay the expenses of operating the line; but, stimulated by the prospective growth of the country through which it passed, and the proposed extension of your road, we persevered, and by diligent effort, succeeded in inducing to your route a class of through business which it had not previously enjoyed; and, furthermore, we assisted in every possible way to encourage and promote the traffic in various products of the region along the route of the Iron Mountain Road: and it is only of late that we have had any encouragement to hope for compensation for our outlay and efforts, involving considerable time, labor, and expenditure of money.

In the opinion of officers of your own, as well as those of railroads in Texas, it was thought that a separate agency of this company should be established in St. Louis, as it might be the means of securing business between this point and Texas, which was, at the time, supposed to be seeking other channels. Our company at once yielded to this wish, and has since maintained an office here, at considerable expense, for the representation and interest of your line.

It is believed that the service we have rendered the public has always proved entirely satisfactory, and, so far as

known, no complaint has ever emanated from yourself or other officers of your road as to the conduct of the same.

In view of all these circumstances I am surprised at this notice proposing to terminate our business relations, and in bringing the matter to the attention of yourself and Board of Directors, officially, it is with the hope that no other arrangements will be consummated which will exclude our company from your line and, therefore, have to ask your favorable consideration of this, our application, for a continuation of present, or such other facilities as may be in your power to accord, and upon terms and conditions you may see fit to grant any other persons.

Asking an early response,

I am, respectfully,

M. J. O'Brien,

General Superintendent.

XXIX. And your orator further avers, that in furtherance of the purpose to give the said Mississippi Valley Express Company the exclusive enjoyment of the privileges aforesaid, and to terminate all the rights of your orator under the other contract hereinbefore set forth in reference thereto, the said defendant, on the 23d day of April, 1880, sent to the said Adams Express Company a letter in the words and figures following, to-wit:

"St. Louis, Iron Mountain and Southern Railway.

General Superintendent's Office,
St. Louis, *April* 23, 1880.

J. H. Rhodes, Esq., *Sup't Adams Express Co., Cincinnati, O.:*

Dear Sir:—This company has decided that it is to its interest to terminate the contract made with you April 30, 1872, and has directed me to give you the notice contemplated in said contract, which will terminate the same thirty days from April 26th.

Yours truly,

(Signed,) A. W. Soper, *Gen. Sup't.*"

XXX. And your orator further avers that on the 30th day of April, 1880, it received from the said defendant a further communication in the words and figures following, to-wit:

"ST. LOUIS, *April* 30, 1880.

M. J. O'BRIEN, ESQ., *Gen. Sup't Southern Express Co.:*

DEAR SIR:—In giving you notice I named sixty days from March 26th.

Mr. Allen desires me to write you, asking if you will be ready to turn over the line to the new company sooner than May 26th.

Yours truly,
A. W. SOPER, *Gen. Sup't.*"

To which, on the 3rd day of May, it returned an answer in the words and figures following, to-wit:

"MEMPHIS, *May* 3, 1880.

A. W. SOPER, ESQ., *General Superintendent St. Louis, Iron Mountain and Southern Railway, St. Louis, Mo.:*

DEAR SIR:—I am this morning in receipt of your favor of the 30th ultimo, referring to your notice terminating, on May 26th, the business arrangement existing between our respective companies, and, further, asking if this company "will be ready to turn over the line to the new company sooner than May 26th."

Responding to your inquiry will suggest, that our continuation on the road ought not to hinder or interfere with the proposed operations of any other similar organization to whom it may be the pleasure of your company to accord equal privileges.

Respectfully,
W. J. O'BRIEN,
General Superintendent."

And that on or about the 5th of May, instant, it received an answer to its said letter of the 13th of April, above set forth, in the words and figures following, to-wit:

"ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY CO.

PRESIDENT'S OFFICE,
ST. LOUIS, *May* 4, 1880.

W. J. O'BRIEN, ESQ., *Superintendent Southern Express Company:*

DEAR SIR:—I have considered the contents of your letter of April 13th.

Having made arrangements with another express company, which we consider more desirable and advantageous to us than that which has existed heretofore with the Southern Express Company, we have not been able to find any sufficient reason for recalling the notice given you by our superintendent on the 26th of March. If the proposals in your letter had been received earlier, possibly the result might have been different; but, as it is, it is too late. We expect the new company to come upon our road about the 26th instant, or as soon as the necessary arrangements can be made.

Yours, very truly,
THOS. ALLEN,
President."

To which said letter your orator, on the 7th of May, instant, sent a reply, in the words and figures following:

MEMPHIS, *May* 7, 1880.

THOS. ALLEN, ESQ., *President St. Louis, Iron Mountain and Southern Railway Company, St. Louis, Mo.:*

DEAR SIR:—I am in receipt of your favor of the 4th instant. It states that "if the proposals in your letter had been made earlier, possibly the result might have been different; but as it is, it is too late."

My communication, to which you make reference, concluded with the request that your company would be pleased to extend to the Southern Express Company facilities for the continuation of its business, over your lines, upon such terms as you might see fit to accord to any similar organization.

Construing that portion of your favor just quoted to mean that if we had previously proposed terms, etc., I will state that at my instance our Mr. H. C. Fisher, superintendent, visited St Louis, January 28th last, for the purpose of conferring with you in regard to a new contract. He was informed by your Mr. Soper that you were too ill to talk business, and Mr. Fisher then proposed certain terms as a basis for a new contract, which were assented to by Mr. Soper as fair, reasonable, and all that his company could expect, and he promised to urge your acceptance of same. At the same time Mr. Fisher suggested that if the rates and conditions named should not be entertained, he would be pleased to have a proposition from your company.

Still indulging the hope that our business relations may continue undisturbed, and prove of mutual interest,

I am, respectfully,

W. J. O'Brien, *Gen'l Supt.*

XXXI. Your orator further avers that on or about the 9th of May instant, it received from the said defendant a further letter, in the words and figures following:

St. Louis, May 8, 1880.

M. J. O'Brien, Esq., *General Supt. So. Ex. Co.*

Dear Sir:—I am in receipt of your letter of May 3d, and have referred it to Mr. Allen. We are somewhat surprised at your intimation that your continuation on the road should not hinder or interfere with the proposed operations of the new company. We are reminded of the uninterrupted and exclusive privilege you have enjoyed upon this line for the ten years past, and now that it is decided to change, you can not but see the importance of allowing the new people like privileges. Mr. Allen is determined in this matter—is personally interested with his friends—and I believe you can not but decide with me, the better policy would be to retire in harmony, and retain the friendly relations which have so far existed between the officers of the two companies. I shall be pleased to learn your decision in the matter.

Yours, respectfully,

A. W. Soper.

XXXII. And your orator further avers that on or about the 12th of May instant, it received from the said defendant a letter, in the words and figures following, to-wit:

St. Louis, May 11, 1880.

M. J. O'Brien, *General Sup't. Southern Express Company:*

Dear Sir:— In your reply to your letter of the seventh, I have to say that under the contract we have made it will be impracticable to have the Southern Express Company continue to do business on our line, as an express company, in our passenger trains after the twenty-sixth instant. You will therefore please arrange your affairs so that the new company may take up the business without interruption from and after that date, when our contract with the Southern Express will have terminated.

Very respectfully yours,

Thos. Allen,

Prest St. L. I. M. & S. R. R.

XXXIII. And your orator further avers, as it has hereinbefore averred, that it was the intention of the said defendant, on and after the said 25th day of May, instant, to exclude it from participating, in behalf of the public whom it represents, in the conduct of the express business over the lines of the said defendant's railway; and that it retained the said intention, until on or about the 15th day of May instant, when it suddenly changed the same, as hereinafter more particularly stated.

XXXIV. And your orator further avers that heretofore your orator was engaged in the transaction of its express business over the railway in the State of Alabama, known as the Mobile and Montgomery Railway Company, and in the State of Tennessee, over the railway known as the Nashville, Chattanooga and St. Louis Railway, and that the said Adams Express Company was in like manner engaged

in the State of Kentucky, on the line of the Louisville, Cincinnati and Lexington Railway Company, and in the State of Indiana over the line of Railway known as the Louisville, New Albany and Chicago Railway.

XXXV. And your orator further avers that in or about the month of July, 1879, the Louisville and Nashville Railway Company, of the State of Kentucky, revived an act passed by the legislature of that State, on or about the 3d day of June, 1865, entitled "an act to incorporate the Union Express Company," and caused to be organized thereunder a corporation known as the Union Express Company, and thereafter gave or caused to be given to your orator, and to the said Adams Express Company, and by and on behalf of each of the four railway companies in the preceding paragraph mentioned, a notice in substance, to the effect that your orator and the said Adams Express Company must, on or before a given day, and either on the 20th of April or the 10th of May instant, withdraw its business and messengers from the said railway lines of the said four companies, because and for the reason by each of said four companies then severally assigned in writing, that it had made an exclusive contract with the said Union Express Company for the future transaction of the express business over its line, and that thereafter the previous facilities and accommodations afforded to your orator and the said Adams Express Company, would be withdrawn.

XXXVI. Your orator further avers that your orator and the said Adams Express Company were severally advised that neither of the said four railway companies could lawfully make an exclusive contract of the nature aforesaid with the said Union Express Company, or lawfully eject your orator or the said Adams Express Company from the lines of the said railways, and that, in order to maintain and protect the rights of your orator and the said Adams

Express Company in the premises, your orator commenced suit in the Circuit Court of the United States for the District of Alabama against the said Mobile and Montgomery Railway Company, and a like suit in the same court for the Middle District of Tennessee against the said Nashville, Chattanooga and St. Louis Railway Company; and the said Adams Express Company commenced a like suit in the same court for the District of Kentucky against the Louisville, Cincinnati and Lexington Railway Company, and also a like suit in the same court for the District of Indiana against the Louisville, New Albany and Chicago Railway Company; and that the plaintiffs in each of said suits severally procured therein, *ex parte*, an order restraining each of the said four railway companies from interfering in any manner with the express business of your orator, or of the said Adams Express Company, and each of which said orders was procured and served before the said tenth day of May, instant, and before the day on which the said two express companies had been notified to withdraw from the lines of the said railways, and a copy of which said order, as granted in the suit against the said Louisville, New Albany and Chicago Railway Company, is hereto annexed, marked "Schedule A."

XXXVII. And your orator further avers that the fact that a restraining order had been so as aforesaid granted, became and was publicly known, and subsequently became and was known to the defendant.

XXXVIII. And your orator further avers, as it is informed and believes, that on the return day of the order, so as aforesaid, issued against the said Louisville, Cincinnati and Lexington Railway Company, an application was made to the court on behalf of the defendant therein, for a postponement of the argument thereof, and that a discussion was then and there had, in the course of which it was

announced by the court that, in its opinion, the contention of the plaintiff in the said suit was well founded; that it was entitled to the relief which it prayed, and that the said court had jurisdiction to award the same, and thereupon said postponement was granted.

XXXIX. Your orator further avers, upon information and belief, that the substance of the opinion so expressed by the said court, was communicated to the said defendant, and that, thereupon, the said defendant met in conference at Louisville, the representatives of the said Louisville and Nashville Railway Company, and of the said four other railway companies, and then and there confederated together for the purpose of destroying, so far as they could, the express business of your orator, and of the said Adams Express Company, and for that purpose did agree that they would severally terminate their alleged exclusive contracts with the said Mississippi Valley and the said Union Express Companies, and would themselves thereafter effect the desired result by assuming an exclusive right to conduct the express business over their several lines of railway, and would not thereafter accord to either your orator or to the said Adams Express Company the facilities and accommodations theretofore granted to them severally, but would exclude therefrom, and would refuse to transmit the express matter of the said two companies, except upon condition of their surrendering the custody thereof, and of paying such express rates or charges as the said railway companies might severally see fit to adopt.

XL. And your orator further avers, as it is informed and believes, that on the 17th day of May, inst., the said restraining order against the said Louisville, New Albany and Chicago Railway Company came on for hearing, at Indianapolis, before the Honorable Associate Justice Harlan, of the Supreme Court of the United States, and that, there-

upon, the defendant railway company, in pursuance of the said combination and agreement, advised the said Court that it had canceled the said contract with the said Union Express Company, and that it proposed thereafter to conduct its own express business over its said line of railway, and to thereafter exclude the said Adams Express Company therefrom; and thereupon the said Court made an order in the premises, of which a copy is hereto annexed, marked "Schedule B."

XLI. And your orator further avers that the said defendant, in pursuance of the combination and agreement aforesaid, adandoned its alliance with the said Mississippi Valley Express Company, and thereafter, and on the 15th day of May instant, gave to your orator, and also, in substance, to the said Adams Express Company, a notice in the words and figures following, to-wit:

"ST. LOUIS, MO., *May* 15, 1880.

H. C. FISHER, ESQ., *Div. Supt. Southern Express Co.:*

SIR:—As by notice heretofore given you, the contract made with the Southern Express Company, under date of February 1, 1874, will terminate on the 26th inst. The St. Louis, Iron Mountain and Southern Railway Company has determined to transport all express matter, and transact all express business on its own account, and through and by its own offices and agents, on and after the first day of June next, in its own cars and on and over its own roads.

We shall be glad to receive, transport, and deliver any express matter you and your company may think proper to intrust to us.

Very truly,
THOS. ALLEN,
President."

XLII. And your orator further avers, as it is informed and believes, that it is the intention of the said defendant, on the first day of June next, to exclude your orator, its express safes and messengers, from its said railway lines,

and to refuse to accord to your orator thereafter any facilities or accommodations therefor, such as it has heretofore, and for years past daily accorded, and that such exclusion will take place unless restrained by the order of the Court, and that, if the same so take place, the express business of your orator over the lines of the said defendant's railway will not only be irreparably injured, but will absolutely be destroyed; that its customers and patrons will be lost to it; that its good will, property, and investment will be rendered worthless; that its ability to keep its contracts with other railway and express companies will be terminated, and that its usefulness to the public, as its servant, would be destroyed.

XLIII. And your orator further avers, as it is informed and believes, that the defendant has no legal right to exclude your orator from its railway lines, but that it is its legal duty to continue to afford to your orator, upon its passenger trains and at its depots and stations, the same facilities which it has heretofore accorded, or which it may hereafter afford to itself: and that, under the laws of the State of Missouri, the said defendant has no lawful power to arrogate to itself the exclusive right of conducting the express business over its said lines of railway, or to exclude other express companies from participating therein, or to charge such other express companies such express rates as the defendant may see fit to adopt; that, by said laws, the said defendant, and every railroad corporation in said State, is required to give public notice of the regular time of starting and running its cars, and to furnish sufficient accommodations for the transportation of all such passengers, baggage, mails, and express freight as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting, and also to stop all trains carrying passengers, at the junction or intersection of other railroads a sufficient length of time to allow the transfer of passen-

gers, personal baggage, mails, and express freight from the trains of railroads so connecting or intersecting, and are compellable to receive all passengers and express freight from such connecting or intersecting roads, whenever the same shall be delivered to them, and to take, transport, and deliver the same, without unnecessary delay, and for such charges, and without any discrimination, whether they transport such freight in their own name or in the name of another, and for such toll or compensation therefor as is specifically provided by law, or by the railroad commissioners appointed by law, and annually to transmit to said commissioners a report, under oath, showing, among other things, what express companies run on their roads, and on what terms and conditions, and the kind of business done by them.

XLIV. And your orator further avers that it is now daily engaged in the transaction of its express business over the lines of the Memphis and Little Rock R. R., the Hot Springs R. R., and the Little Rock and Fort Smith R. R., and which are connecting or intersecting railroads with the said defendant's railway, and over all of which your orator has been constantly in the habit of transporting express matter designed for points on the line of the said defendant's railway.

XLV. And your orator further avers that the said railroad companies have classified railway freight according to law, and that the rates of toll or compensation therefor have been provided by law, and that the same can not be lawfully exceeded by the said defendant in its charges to your orator, or to the public whom your orator represents.

XLVI. And your orator further avers, as it has hereinbefore averred, that it is now in the daily custom of making

with its own horses and wagons, which it now possesses, and under drivers, for whose fidelity it is responsible, all the collections and deliveries of express freight as between the public and the railway lines of the said defendant, which the public can not conveniently make on its own behalf, and that it does not require from the said defendant any similar service, nor, as it is advised and believes, can the said defendant lawfully charge it therefor.

XLVII. And your orator further avers that, in order to ascertain what interpretation said defendant intended to place on its communication to your orator of the 15th of May, as aforesaid, upon the words, "we shall be glad to receive, transport and deliver any express matter you and your company may think proper to intrust to us," your orator, on or about the 19th day of May instant, inquired of the said defendant what rates of toll or compensation the said defendant intended to charge your orator for the future conduct of its business, and that your orator was informed by the said defendant that the said defendant would not convey on the trains conveying passengers, baggage and mails, the express matter of your orator, either at the published tariff rates of the said defendant, or at the rates prescribed by said railroad commissioners, and that the defendant's tariff of express rates had not yet been fixed, and that before the same would be furnished to your orator, said defendant desired to know what your orator intended to do in reference to the future conduct of its business over the said defendant's railway.

XLVIII. And your orator further avers, as it is advised and believes, and therefore charges, that it is lawfully entitled to demand and to receive from the said defendant, the same facilities and accommodations for transacting the express business over the lines of the said defendant's railway as may be accorded by the said defendant to itself; and that it will be entitled to have all its express matter

transported over the lines of the said defendant railway at the rates of freight or toll specifically provided by law and by the charter of the said defendant, and by the said railroad commissioners, and upon the same trains, and with like accommodation thereon, and at depots and stations, as the said defendant may accord to itself in the transportation of such express matter as it may carry; and that, in any event if the said defendant shall, during the pendency of this suit, or hereafter, undertake to do and do its own express business, the said defendant can be legally required to deduct, from the charges to be made by it to the public for the transportation of express matter, upon all express matter transported by it for the said Southern Express Company, a just and reasonable compensation for the accessorial service rendered by the said Southern Express Company, beyond and off the lines of railway of the said defendant, in the collection of goods from shippers or consignors, and the delivery of goods to consignees, by means of horses and wagons, and which accessorial service the said Southern Express Company does not require or need at the hands of the said defendant, but is now performing and rendering for itself, as is hereinbefore set forth.

XLIX. This plaintiff further, in the event that the said defendant, during the pendency of this suit, undertakes to conduct, and does conduct, for itself, the express business over its said lines of railway, hereby offers to comply with all the proper rules and regulations of the said defendant in reference to the conduct of said business, and is willing and ready, and hereby offers to pay all the reasonable freight or tolls which the said defendant railway company may lawfully demand for the transportation of express matter, as aforesaid.

L. Your orator further says, that the said Southern Express Company is now in the possession of the good will

of its customers, and is daily occupied in the conduct of its business over the lines of the said defendant's railway, and that it will be greatly injurious to the business of the said Southern Express Company if said company shall be ejected or excluded from the lines of the defendant's railway, even in the event of the said defendant's undertaking hereafter to conduct its own express business, and that there is no legal or practical necessity for any exclusion of the said express company from the lines of railway of the said defendant, the said express company being willing, as aforesaid, to conform to all proper rules and regulations of the said defendant, and offering to pay, as it hereby does, all the reasonable freights or tolls which the said defendant railway company may lawfully demand under its charter for services to be rendered to the said company in the transportation of its express matter, as aforesaid.

LI. And your orator further avers, as it has hereinbefore averred, that it has now the same and as great need and necessity, as the representative of the public, as it ever had, for the daily use and enjoyment of express privileges and accommodations over the defendant's said railway lines, and that successive actions at law, to be brought upon dally tenders of express matter to the said defendant, and its daily refusals to transport the same, would involve your orator in a multiplicity of litigations, which it has not the ability to institute or prosecute on every occasion and in every county when and where such tenders and refusals should take place; and that such litigations would be valueless in point of recovery to the said Southern Express Company, and would not protect its right on behalf of the public to have its express matter carried on lawful terms; and that such exclusion and ejectment, if it is permitted to take place, will not present the case of a single and temporary disturbance of the business of the Southern Express Company, but from its very nature will constitute a permanent,

perpetual, and irreparable injury thereto, and the entire loss within the localities designated of its good will, business, reputation, and property therein. and would, within the same localities, permanently prevent it from accomplishing for the public the specific objects for which the said Southern Express Company was organized and perfected; and that the said Southern Express Company is remediless in the premises at and by the course of the common law, and that the common law does not and can not afford so adequate and perfect a remedy herein as it is within the jurisdiction and province of a court of equity to afford.

LII. And your orator further says, as it is advised and believes, that the said defendant is a public corporation and a common carrier under the charter and laws aforesaid, and exercises thereunder a public office for the public good, and that as such it is amenable to the jurisdiction of a court of equity, and that such courts are always open and ready to exercise their powers for the purpose of compelling such corporations and common carriers to keep within the limits which the legislature has thought proper to prescribe for the exercise of their powers, and not to exercise powers beyond those which their acts of incorporation confer; and to proceed by injunction to prevent illegal injury or destruction to the rights or property of others, and to prevent illegal exclusion from the enjoyment of public rights; and to protect all such rights in their fullest extent against all and every injury thereto; and that this court has power to protect the said Southern Express Company in the premises, and to compel the said defendant to accord to your orator all its legal rights in this behalf.

Wherefore, your orator prays—

1. That during the pendency of this suit the said defendant, its officers, agents, servants and employes, may be restrained and enjoined by a proper preliminary or provisional

order or injunction, and until the further order of the court, from interfering in any manner with, or disturbing in any manner the enjoyment by the Southern Express Company of the facilities now accorded to it by the said defendant, upon its lines of railway for the transaction of the business of the said Southern Express Company, and of the express business of the public confided to its care; and from interfering with any of the express matter or messengers of the Southern Express Company; and from excluding or ejecting any of its express matter or messengers from the depots, cars, and lines of the said defendant, as the same have been heretofore, and are now, enjoyed and occupied by the said Southern Express Company; and from refusing to receive and transport, in like manner as the said defendant is now doing, over its lines of railway, the express matter and messengers of the said Southern Express Company; and from interfering with or disturbing the business of the said Southern Express Company, or its present relations, in reference thereto, with the said defendant, in any way or manner whatsoever, and, so long as the said Southern Express Company shall be willing and ready, and offer to pay, according to all legal rates therefor.

2. That, if any dispute or disagreement shall arise between the parties hereto, during the pendency of this suit, and before a final decree herein, upon the question of what is a lawful or reasonable compensation to be paid by your orator to the defendant for the transportation of express matter, your orator may be permitted to bring the same by way of interlocutory application to this court for its decision, and that, pending the inquiry thereon, the preliminary injunction heretofore prayed, may be continued to the same purport, tenor, and effect as if the prayer for the same were here repeated.

3. That the said defendant may be decreed by this court to transport, at all times, the express matter, safes and

messengers of the said Southern Express Company, by the same trains, and with the same accommodations thereon, and in its depots and stations, as it may transport its own express matter, or as it may accord to itself; and that the said defendant may be decreed so to transport the said express matter, safes and messengers of the said Southern Express Company, at and for the statutory tolls and compensation in that behalf by law provided; and that the said defendant may be decreed to make a reasonable rebate or reduction, to be fixed and determined by this honorable court, from its charges to the said Southern Express Company, by reason of its performance of said accessorial service, as above specified, so long as the said Southern Express Company shall offer to conform to all the reasonable rules and regulations of the said defendant, and to pay all lawful charges for the transaction of its said business.

4. That a permanent injunction may issue herein to the same purport and effect as is hereinbefore prayed in regard to said provisional or preliminary injunction.

5. That your orator may have such other relief or such further or different relief herein, with its costs, as to the court may seem meet.

To the end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may, under its corporate seal and according to the best and utmost of its knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to each and all of the matters and things in this bill of complaint contained, and that as fully and particularly as if the same were here repeated paragraph by paragraph, and it were specially interrogated thereunto severally, may it please your Honors to grant unto your orator a writ of *subpœna ad respondendum*, issuing out of and under the seal of this honorable court, to be directed to the said defendant, the St.

Louis, Iron Mountain and Southern Railway Company, commanding it on a certain day and under certain penalty, to be therein inserted, to appear before your Honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises; and, further, to stand to, perform and abide by, such further order or decree herein as to your Honors shall seem meet; and, also, a writ of provisional and a writ of perpetual injunction to the same tenor, purport, and effect, as is hereinbefore, set forth and prayed.

And your orator will ever pray, etc.

THE SOUTHERN EXPRESS COMPANY.

S. M. BRECKINRIDGE,
C. A. SEWARD,
F. E. WHITFIELD,
Of Counsel and Solicitors for Plaintiff.

FIRST RESTRAINING ORDER.

A temporary restraining order was granted on the filing of the bill on the 21st day of May, 1880, returnable on the 1st day of June, 1880, on which day, as appears by said transcript, the following order was made:

"The motion of the complainant for a preliminary injunction herein, according to the prayer of the bill, having been brought on to be heard, and the parties being present by their counsel, and the court having duly considered the questions presented, after argument for the defendant as well as for the plaintiff, doth hereby order that the defendant, its officers, agents, servants and employees, be enjoined

and restrained, until the final determination of this cause, from preventing the plaintiff's enjoying the same facilities in the conduct of its express business permitted to any other express company, or exercised by the defendant itself, on payment by the plaintiff of reasonable compensation therefor."

ANSWER OF THE DEFENDANT TO COMPLAINANT'S BILL OF COMPLAINT.

1. This defendant now and at all times hereafter, saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, says: it does not know and can not set forth as to its belief or otherwise whether the said Southern Express Company is a corporation, duly created, organized and now existing under the laws of the State of Georgia, for the purpose of doing a general express business, or the business of express carriers, and with the powers enumerated in the first paragraph of complainant's bill.

2. Defendant denies, as charged in second paragraph of complainant's bill, that railroad companies, by reason of the limited extent of their lines and powers and the extraordinary care and attention demanded, and the peculiar and immense hazard, were unwilling to perform for the public the kind of transportation and service known as express business, in a manner as efficient and with as responsible assurances of safety and dispatch as the necessities and conveniences of the public demand, and denies that by usage said railroad companies have surrendered the said business to be performed by express companies, and by long usage and custom, as well as in respect to their lawful right thereto, have accorded to express companies for a reasonable compensa-

tion the means and facilities upon their lines for doing this kind of transportation.

3. Defendant, as to the statements contained in the third paragraph of complainant's bill of complaint, says it does not know and can not set forth as to its belief or otherwise whether the amount of investment in capital and equipment of the express companies in the United States is over $30,000,000, and whether the said amount is not incumbered by mortgage or other lien, and constitutes at all times a fund sufficient to secure the public against any probable loss of its property while in the custody of said express companies.

Defendant denies that security as ample and complete as that furnished by the said express companies is not or can not be afforded by any railroad company in the United States.

4. Defendant, as to the statements contained in paragraph four of complainant's bill, denies that said express companies have invested their capital and built up their business upon the express understanding with the railway companies that they would voluntarily afford all facilities needed by the said express companies, as the representatives of the public for the transaction of their business, or upon the knowledge and belief that the public, whether demanding such facilities in its individual capacity, or through the express companies as its representative, had a legal right to compel the granting thereof by those who had been created by the public, and for the public. Defendant denies that no railway company has ever had the ability to assume as between itself and the public such obligations for the transportation of such express matter as are universally assumed by the express companies towards all who treat them with frankness.

5. Defendant, as to the statements contained in paragraph five of complainant's bill of complaint, denies that

there has been any public demand for the existence and use of an express company as a medium of exchange of money and the collection of negotiable securities and the transportation of express packages of greater or less value, or of packages, the price or value of which was to be collected from the consignee at the time of delivery and remitted to the consignor.

6. As to the statements contained in paragraph six of complainant's bill of complaint, defendant denies that express companies have been created by the public as their instrumentalities for the transmission of public as well as of private moneys, and that the necessity for the existence of such instrumentalities is as great as the necessity for the ordinary *vehicles of commercial intercourse;* denies that in receiving, transmitting and delivering express matter for the public, the express companies act as the agents of the public, giving that attention to the collection, transmission and delivery thereof which neither the public nor the railroad companies can give.

7. As to the statements contained in paragraph seven of complainant's bill of complaint, defendant says it does not know and cannot set forth as to its belief or otherwise whether the same are true or not.

8. Defendant, as to the statements contained in paragraph eight of complainant's bill of complaint, in relation to the equipment and enjoyment of the good will of the Adams Express Company by the said complainant in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and a portion of Tennessee during and since the late civil war, and in relation to the extension and enlargement of complainant's business, and the mode and manner of its conduct of its business therein, and its reputation and stand-

ing, and the extent and value of its business therein, says it does not know and cannot set forth as to its belief or otherwise whether the same as alleged are true or not.

9. Defendant says, as to the statements contained in paragraphs 9, 10, 11, 12 and 13 of the complainant's bill of complaint, that the same are true.

10. Defendant, as to the statements contained in paragraph fourteen of complainant's bill of complaint, admits that the Adams Express Company and said complainant continued severally to enjoy, after the said consolidation of defendant's predecessors into the said St. Louis, Iron Mountain & Southern Railway Co., on the fifteenth day of May, 1874, all the rights, privileges and facilities granted by the two contracts set out in paragraphs eleven and twelve of complainant's bill of complaint until on or about the 1st day of April, 1878; admits that at said last mentioned date the said Adams Express Company, with the assent and permission of defendant, relinquished to the said complainant the transaction of the express business over so much of the lines of defendant as had been embraced in its contract of the thirtieth of April, 1872, with the said Adams Express Company, set out in paragraph eleven of complainant's bill of complaint.

11. Defendant, as to the statements contained in paragraph fifteen of complainant's bill of complaint, denies that for the transportation of its express matter over the lines of the defendant and of its predecessors, the said complainant has paid the sum of $505,761.89, or any amount approximating thereto; denies that a large portion of said amount was paid to said defendant and its predecessors for the transportation of express matter not local over defendant's line, but going to or coming from points beyond the termini of defendant's railroad, and mostly to or from other states of

the Union. Said defendant further denies that the said Adams Express Company during the existence of its relations with defendant paid to it a proportionate amount for similar express service.

12. Defendant, as to the statements contained in paragraph sixteen of complainant's bill of complaint, denies that complainant, relying upon the duty and obligations imposed upon said railroad company by law, and the conditions of the enjoyment of its franchises, as well as by the contract made with defendant and its predecessors to afford to the complainant for a reasonable compensation, equal and indiscriminate opportunities and facilities of transportation of the kind, and to be enjoyed in the manner demanded by the convenience and necessities of the public, and established by the usage and custom of defendant, and all other railroad companies in like cases made large investments of money, in building up its business at stations and along and upon said railroad, and in advertising the same to the public. Denies that by such investments and its energies expended through a long time to secure to the public the facilities of safe and rapid dispatch to any and all places, and to itself the confidence and patronage of the public, it has built, and now owns and enjoys an express business, and prestige and good will thereto upon defendant's line, of great value to the complainant, by reason of the tolls and profits thereby accruing to complainant.

13. Defendant, as to the statements contained in paragraphs seventeen and eighteen of complainant's bill of complaint in relation to the alleged arrangement entered into by complainant with the said Adams Express Company for the general regulation of the transportation of property daily coming from the territory of the one into the territory of the other, and in relation to the interchanges made by said complainant with the said Adams Express Company of

express matter, at various places in the Southern States, and in relation the effect and advantages of such an arrangement and of such interchanges to the public, says that it does not know and cannot set forth as to its belief or otherwise, whether or not the said statements are true.

14. Defendant, as to the statements contained in paragraph nineteen of complainant's bill of complaint denies that the said complainant now owns and controls an express business properly and most expeditiously to be conducted over defendant's railway sufficient to guarantee to the said defendant tolls or earnings in the future as great or greater than those paid it as before stated, to the like pecuniary benefit of the defendant as it has heretofore received.

15. As to the statements contained in paragraph twenty of complainant's bill of complaint, defendant says that for the purposes of this suit it admits the same to be true.

16. Defendant, as to the statements contained in paragraph twenty-one of complainant's bill of complaint, admits that complainant frequently has had occasion to forward over defendant's line large sums of money, but denies that defendant, having its property heavily mortgaged to secure existing debts, affords no adequate or prompt security or indemnity in case of loss therefor. Denies that the safety of complainant and defendant, as well as their convenience has demanded, and that defendant according to the usage of railroad traffic in such cases, has accorded the means and facilities to complainant of forwarding such sums of money in the special care and custody of complainant's own agents. Denies that otherwise complainant would be practically denied the opportunies of safe transportation of said sums of money over defendant's line, intended by the creation of defendant as a common carrier for the public to be afforded to the public.

17. Defendant, as to the statements contained in paragraph twenty-two of complainant's bill of complaint, denies that the interests of complainant and the preservation of its valuable property and good will demand that it shall continue to have and enjoy the daily means and facilities heretofore accorded to it by defendant; denies that complainant for the use and enjoyment thereof has always been ready to pay such just and reasonable compensation, and to conform to such just and reasonable rules and regulations, as may be lawfully required and imposed by defendant. Defendant denies that by reason of the fact of complainant being afforded the facilities accorded to it under the contract aforesaid over defendant's lines, and by force of the statute of the State of Missouri, the duty is imposed upon defendant to always afford to complainant the means and facilities upon its railway of forwarding and transporting in the manner aforesaid by the usage of the express business, upon reasonable terms and regulations, its express matter and messengers.

18. Defendant, as to the statements contained in paragraph twenty-three of complainant's bill of complaint, denies that within a short time before the filing of the bill herein, or at any other time, certain persons have sought and obtained from the legislature, or under the authority of the laws of the State of Arkansas, a charter or other incorporating act for a new express company, call the "Mississippi Valley Express Company," and have perfected the organization of an express company thereunder; denies that any such express company was ever organized under the laws of the State of Arkansas or otherwise.

19. Defendant, as to the statements contained in paragraphs 24, 25 and 26 of the complainant's bill of complaint, admits that the letters and telegrams therein contained are genuine and are correctly set out.

20. As to the statement contained in paragraph twenty-eight of complainant's bill of complaint, admits that the letter set out therein was sent to and received by defendant at or about the time stated therein.

21. Defendant, as to the statements contained in paragraphs 29 and 30 of complainant's bill of complaint, admits the letters therein set out to be true and sent and received as therein stated, but denies that the letter referred to and set out in paragraph twenty-nine was sent to the said Adams Express Company in furtherance of the purpose of giving to the said Mississippi Valley Express Company the exclusive enjoyment of the privileges accorded to the said Adams Express Company, under the contract of April 30, 1872, set out in paragraph eleven of complainant's bill of complaint, and admits that said letter was sent for the purpose of terminating the rights of the complainant under said contract, which it claims to have acquired as the successor and assignee of the said Adams Express Company.

22. As to the statements contained in paragraphs thirty-one and thirty-two of complainant's bill, defendant admits the same to be true.

23. Defendant, as to the statements contained in paragraphs thirty-four, thirty-five and thirty-six of complainant's bill in relation to the transaction of express business by complainant in the States of Alabama and Tennessee, and by the said Adams Express Company in the State of Kentucky, and in relation to the organization of a corporation called the "Union Express Company" by the Louisville and Nashville Railroad Company, and to the giving of a notice to complainant and said Adams Express Company by certain railroad companies therein named to withdraw their business and messengers from the lines of said railroad companies, and in relation to the reasons therefor, and in

relation to the institution of suits by complainant and the said Adams Express Company against certain railroad companies therein named for the protection of the rights of complainant and the said Adams Express Company, and the procuring of restraining orders in said suits against the said railroad companies, and the nature and purport of said orders, says it does not know and cannot set forth its belief or otherwise whether the same are true.

24. As to the statements contained in paragraph thirty-nine of said complainant's bill, defendant denies that said defendant met in conference at Louisville or elsewhere the representatives of the said Louisville & Nashville Railway Company, and of the said four other railway companies mentioned in paragraph thirty-four of complainant's bill of complaint, and then and there confederated together for the purpose of destroying, so far as they could, the express business of complainant and of the said Adams Express Company: denies that they, for that purpose or any purpose, did agree that they would severally terminate their exclusive contracts with the said Mississippi Valley and said Union Express Companies, and would themselves thereafter effect the desired result by assuming an exclusive right to conduct the express business over their several lines of railway, and would not thereafter accord to either complainant or to the said Adams Express Company the facilities and accommodations theretofore granted to them severally, but would exclude therefrom and refuse to transmit the express matter of the said two companies, except upon condition of their surrendering the custody thereof, and of paying such express rates or charges as the said railway companies might severally see fit to adopt.

25. As to the statements contained in paragraph forty-one of complainant's bill, defendant admits the giving of the notice therein set out to complainant and to the said Adams

Express Company, but denies that such notice was given in pursuance of any combination and agreement by and between the defendant and the representatives of the said railroad companies mentioned in paragraph thirty-nine of complainant's bill.

26. Defendant, as to the statements contained in paragraph forty-three of complainant's bill, denies that it is the duty of defendant to continue to afford to complainant upon its passenger trains and at its depots and stations the same facilities which it has heretofore accorded or which it may hereafter accord to itself; denies that under the laws of the State of Missouri the defendant has no lawful power to arrogate to itself the exclusive right of conducting the express business over its lines of railway, or to exclude other express companies from participating therein, or to charge such other express companies such express rates as said defendant may see fit to adopt; denies that defendant by the laws of said State of Missouri is compellable to receive all passengers and express freight from connecting or intersecting roads whenever the same shall be delivered to it, and to take, transport and deliver the same without unnecessary delay, and for such charges, and without any discrimination whether it shall transport such freight in its own name, or in the name of another, and for such toll or compensation therefor as is specifically provided by law, or by the railroad commissioners appointed by law, and annually to transmit to said commissioners a report under oath showing, among other things, what express companies ran on its road, and on what terms and conditions, and the kind of business done by them.

27. As to the statements contained in paragraph forty-five of complainant's bill, defendant admits that the railroad companies have classified railway freight, and that the rate of toll or compensation therefor has been provided by

law, but denies that the same cannot be lawfully exceeded by the defendant in its charges to complainant or to the public.

28. As to the satements contained in paragraph forty-six of complainant's bill, defendant denies that the complainant is in the daily custom of making with its own horses and wagons all the collections and deliveries of express freight as between the public and the railway lines of defendant, which the public cannot conveniently make on its own behalf; denies that the public does not require from defendant any similar service, and that the defendant cannot lawfully charge it therefor.

29. Defendant, as to the statements contained in paragraph forty-seven of complainant's bill, denies that, in answer to the inquiry of complainant on or about the fifteenth day of May, 1880, as to the interpretation defendant intended to place on its communication to complainant of about said time, defendant informed complainant that said defendant would not convey on the trains conveying passengers, baggage and mails, the express matter of complainant, either at the published tariff rates of said defendant, or at the rates prescribed by said railroad commissioners, and that defendant's tariff or express rates had not been fixed; and that before the same would be furnished to complainant, said defendant desired to know what complainant intended to do in reference to the future conduct of its business over defendant's railway.

30. As to the statements contained in paragraph forty-eight in complainant's bill, defendant denies that complainant is entitled to demand and receive from defendant the same facilities and accommodations for transacting the express business over the lines of defendant's railway as may be accorded by said defendant to itself. Denies that it is

entitled to have all its express matter transported over the lines of the defendant's railway, at the rates of freight or toll specifically provided by law, and by the charter of defendant, and by the said railroad commissioners, and upon the same tracks and with like accommodation thereon, and at depots and stations, as the defendant may accord to itself in the transportation of such express matter as it may carry. Denies that defendant, in doing its own express business, can be lawfully required to deduct from the charges to be made by it to the public for the transportation of express matter, upon all express matter transported by it for the said Southern Express Company, a just and reasonable compensation for the accessorial service rendered by the Southern Express Company beyond and off the lines of railway of defendant, in the collection of goods from shippers or consignors, and the delivery of goods to consignees by means of horses and wagons.

31. Defendant states that under its charter of incorporation which was duly granted under and pursuant to the laws of the State of Missouri, on the third day of March, 1851, it is authorized to transport passengers, goods, wares and merchandize of all kinds, and also all kinds of lumber, produce and other articles usually transported on railroads, and to charge and receive such tolls and freights for transportation of persons and commodities on said road or any parts thereof, as shall be to the interest of the same, and that the directors of the defendant are therein authorized to establish such tolls and to alter the same from time to time.

32. Defendant further avers that while it has always claimed the right under the provisions of its said charter to transport what is usually called express matter, and to do a general express business upon and over its own lines—for reasons satisfactory at the time it made the contracts set out

in paragraphs eleven and twelve in the complainant's bill, under and by virtue of which the said Adams Express Company and the said Southern Express Company in its own right, and as the successor of the said Adams Express Company, transacted the said express business over the lines of the defendant until about the first day of June, 1880, when the said contracts were terminated by notice duly given in accordance with the terms and provisions of said contracts.

33. Defendant further avers that since the said first day of June, 1880, the defendant has formed and organized what is known as the "Express Department of the St. Louis, Iron Mountain & Southern Railway Company," and has been and is now receiving, transporting over its lines and delivering freight commonly known as express freight, and is now doing a general express business on its own lines.

34. Defendant avers that the express business, as transacted by the said Southern Express Company, is as much the legitimate business of defendant as any other traffic transported over its lines, and that there is no more need or reason for the intervention of the said complainant between the St. Louis, Iron Mountain & Southern Railway Company and its customers than there is for its intervention in the transportation of lumber or passengers; that it is manifestly unjust to the stockholders of defendant to permit a third party, like the Southern Express Company, to make use of the property of defendant and the services of defendant's employees to carry away a considerable annual profit from the transportation of freight.

35. Defendant further avers that many railroad companies in the United States, some of them for years past, have been transporting all such freight as is usually known as express matter, and have been and are now transacting

over their lines what is commonly denominated a general express business, with as much dispatch and promptness, in as safe and secure a manner, and with greater satisfaction to the public, as the defendant is informed and believes, than the said express companies have been or are now doing.

36. Defendant further avers that the compensation it has received from said complainant for the transportation of its traffic over its lines during the time of the existence and operation of the said contracts before referred to, was insufficient, and afforded no adequate pecuniary benefit to defendant, and that the conduct of complainant in the management and transaction of its business over the lines of defendant, its intervention between defendant and its customers, its retention of the services of the station and freight clerks of defendant, its discrimination in favor of itself by causing the transfer of a large amount of freight to itself that should have been properly carried by defendant, its wilful and continued violations of said contracts, under and by virtue of which it was permitted to do the said express business over the lines of defendant's road, by the concealment and withholding of correct and true reports of the weights of the express freights transported daily by it over defendant's lines—occasioned great damage to defendant and compelled the termination of said contracts by defendant.

37. Defendant further avers that it has been informed and believes that complainant is only entitled to demand of defendant as a common carrier the same rights and privileges in the manner and rates of and for the transportation of its express freight that any other shipper or consignor has; that its rights in the transportation of its express matter spring from the duty of defendant as a common carrier to the public, and that defendant owes to complainant no

other duty than it owes to any other person; that defendant is willing and always has been willing to transport all the freight or express matter of complainant at reasonable rates, and to give to complainant the same facilities and privileges that it grants to any other express company, or to any other person in like circumstances.

38. Defendant further avers that it does not claim and never has claimed a right to exclude the transportation of the express matter of the complainant from the lines of defendant's railway, and has always been willing and is now willing to carry and transport any freight or express matter of complainant that it may offer to defendant. Defendant claims the right to carry and transport what is called express matter in the spaces in its express cars selected by itself, and under the supervision, care and control of its own employees, and has refused and does refuse to complainant the right to have allotted to itself any particular space in defendant's express cars for it, exclusive use, or to permit its messengers to ride in the express cars and to take charge of complainant's express freight.

39. Defendant further avers that whatever expenditure complainant has made in building up its business at the stations and along the lines of defendant, and establishing other and connecting routes for business to be transported beyond the lines of defendant's railroad, has been made by complainant solely in reliance upon the contracts above referred to, and with the knowledge that the same were terminable upon thirty and sixty day's notice. Defendant further avers that the amount expended by complainant in reference to its business along the lines of defendant's railway is inconsiderable, not exceeding in the aggregate $10,000.

40. This defendant denies, all and all manner of unlawful combination and confederacy wherewith it is by the said bill

charged without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of this defendant.

All of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

43. And this defendant submits to this honorable court that the complainant has not on its bill shown any case in equity or case entitling it to proceed against defendant in this honorable court, and the defendant prays all such benefit as if it had demurred to the said bill.

THOROUGHMAN & PIKE,

Solicitors for Defendant.

PETITION FOR MODIFIED INJUNCTION.

[OCTOBER 15, 1880.]

Ordered that a rule go against the St. Louis, Iron Mountain and Southern Railway Company, returnable Monday, 20th October, 1880, to show cause why the prayer of the plaintiff's petition hereto annexed should not be granted.

The petition of the Southern Express (Company) respectfully represents:

1. This suit was commenced in May last. The defendant has answered herein, and issue has been joined thereon. By stipulation between the parties the larger portion of the evidence on the part of your petitioner for final hearing has been taken, and your petitioner is proceeding to complete its testimony for such hearing. Your petitioner refers to said pleadings.

2. On the first day of June, 1880, this court granted an injunction herein, according to the prayer of the bill in that behalf, and which was granted in open court, after oral argument, and of which the defendant had due notice and said injunction, yet, and now remains in full force.

3. Said court in granting the said injunction intended, as your petitioner is advised and believes, and therefore charges to secure to your petitioner the full enjoyment of all needful express facilities over the line of the said defendant's railway, as your petitioner had theretofore enjoyed the same, or as the said petitioner was then enjoying or might thereafter enjoy the same.

4. The facilities then being enjoyed by your petitioner consist in free access to the vehicles containing express matter, to the stations and cars of the said defendant, the transportation thereof in the custody of messengers, and, when necessary, in safes and packing trunks or chests in baggage cars, and by passenger trains, and in the collection, unless prepaid, of the express charges due thereon from consignees thereof at the time and place of delivery thereof, and in the payment to the defendant by your petitioner of the amounts due from it for such facilities according to the terms of the contract in said bill set forth, to-wit: "On or

"before the tenth day of each month for the business of "the preceding month."

5. Under the terms of the contracts set out in said bill, your petitioner at the time of the commencement of this suit was paying to the said defendant the sum of one hundred and ninety-five dollars per day as and for its compensation for express services rendered up to a certain limit of pounds of freight per day. In the first of said contracts with the said defendant any excess of weight over and above the limited amount of ten thousand pounds was to be paid for at one and a half of the regular first class freight rates of the defendant as established by its freight tariff. Under the second of said contracts with the Cairo and Fulton Railroad, and the Cairo, Arkansas and Texas Railroad, both now constituting part of the defendant's line, any excess of weight over and above the limited amount of six thousand pounds on any one train was to be paid for at the rate of twenty-five cents per hundred pounds per hundred miles. Your petitioner paid in accordance with the terms of said contracts both as to daily amounts and as to charges on freight in excess of the limited amounts according to the terms of said contracts, and until this suit was commenced. Your petitioner avers that said rates were fixed and determined by the then railroad companies, parties to the contracts, and were an adequate compensation for the services rendered thereunder during the eight or six years during which the said two contracts were respectively in existence.

6. Your petitioner further avers that since the granting of the said injunction the said defendant has undertaken, and is now constantly and persistently endeavoring to defeat the same, and to prevent your petitioner from realizing any beneficial effect or protection therefrom, and to defeat the intention of the court in the issuance thereof, and to deprive your petitioner of the use of the express facilities

aforesaid, or of any beneficial or profitable enjoyment thereof. Your petitioner charges that since the granting of said injunction its spirit and intent have been violated and defeated by the said defendant, and your petitioner has been hereby virtually deprived of all benefit thereof. Your petitioner specifies the following acts which have been and are now being committed by the defendant in violation of the said injunction, and by means whereof your petitioner has been and is now deprived of all benefit therefrom.

The day after the granting of the said injunction the defendant adopted and published a new tariff of express charges to be paid by the public generally for express service upon its line of railroad, including therein the accessorial service performed in collecting by means of wagons and servants, express matter about the cities upon the line of its road, and in carrying the same in the custody of its own messengers and at its own risk, and making personal delivery thereof at destination to the consignees at their respective abodes or places of business, and demanded for the first time of your petioner, and now demands of your petitioner the payment by it of the rate specified in such tariff, declining and refusing to make therefrom, at the demand of your petitioner, a reasonable deduction or abatement for the accessorial service aforesaid, performed by your petitioner through its own instrumentalities, and not accepted from or permitted to be performed by the defendant, and utterly refused, and now refuses to transport the express matter of the public in the charge of your petitioner, except upon the payment by your petitioner to the defendant of a compensation for such accessorial service, although not in fact performed or accepted by it, and at and after their tariff rates aforesaid.

That the said defendant thereafter also demanded for the first time of your petitioner, and yet demands of your petitioner an inspection of the contents of the express matter of the public, entrusted to the custody of your petitioner, to be

transported by it to points of destination, some of which are accessible only over the defendant's line, and placed by your petitioner in the custody of its own messengers upon the express trains of the defendant, upon which the defendant usually and habitually heretofore transported such express matter, and stating for reason the refusal of your petitioner to permit such inspection, against the consent and under the protest of your petitioner threw off from said trains the express matter placed thereon as aforesaid, and wholly failed and refused to transport the same, whereby your petitioner was prevented from performing its duty and obligations to the owners of said express matter in respect to the speedy and safe transportation thereof to destination over the usual and most expeditious route, and your petitioner avers that such inspection was never before allowed by plaintiff, nor was such a demand ever before made upon your petitioner by the defendant, or ever before made upon or conceded by any express company, yet it is now persistently made upon your petitioner, and your petitioner's compliance therewith made a condition upon which alone the defendant would transport the matter of your petitioner.

That the said defendant has refused, for the first time since the issuance of said injunction, to accept the express matter in the charge of your petitioner when the same was contained in sealed packages, destined for points reached by the defendant's line, and also for points in other States beyond the same.

That it has demanded and now demands an inspection of the boxes and trunks and bags of your petitioner, and has asserted and now, for the first time since said injunction, asserts a right to charge upon each package therein separately, irrespective of their aggregate weight, as contained in said boxes, trunks and bags. That it has caused such boxes, trunks and bags to be ejected from its cars, and has refused transportation for the same.

That it has demanded from your petitioner, since the issuance of said injunction and for the first time, prepayment of its charges, according to said tariff rate, before it would transport the express matter in the charge of your petitioner.

That it has ejected your petitioner by force and without notice from offices on the line of its road which your petitioner had theretofore and for a long time previously occupied.

That it has charged the public less rates for express service than said tariff rates, and less than it has charged your petitioner.

That it has instructed its agents, who had theretofore acted as the agents of your petitioner, not to act any longer in its behalf.

That it has required your petitioner to pay fare for its messengers while in custody of express matter on its passenger trains, at and after first-class passenger rates, which was never done prior to said injunction in this cause.

That to divert custom from your petitioner it has persistently made a discrimination as to weights of merchandize presented to them by your petitioner for transportation and by other parties, by estimating the weight of merchantdise presented by other parties at much less than the real weight of said articles, and charging said parties at these estimated weights, and by rigidly and minutely weighing at their full weight the articles presented by your petitioner, and charging them at such full weight.

That to divert custom from your petitioner it has issued free passes to those other than the petitioner having express matter to be transported, which was never done prior to said injunction.

And your petitioner further avers as it is advised and believes that the said express tariff is illegal and that the charges to your petitioner thereunder of rates in accordance therewith is illegal, unjust and unreasonable, that the de-

fendant has no lawful right to inspect the express matter confided to your petitioner or the boxes, trunks or bags in which the same was contained or to refuse to transport the same, or to charge after said tariff rates upon each parcel therein contained, or to eject the same from its cars or to demand pre-payment thereon from your petitioner which it does not demand from the public, or to eject your petitioner from the offices occupied by it at the time of the commencement of this suit, or to charge your petitioner more than it charges the public, or to divert its custom by the issuance of said free passes, and that each and every of said acts is violative of the spirit and intent of the said injunction and destructive of the business of your petitioner.

And your petitioner avers, as it is advised and believes that it was the purpose and intent of said injunction to preserve and continue the relations between your petitioner and said defendant in the precise state and condition in which they were when the same was issued, and that the same and other similar injunctions issued by other courts determine that the Railway Companies owe certain duties to the Express Companies and that the latter have certain rights which the court would protect until the final hearing on full proofs by said court of said causes respectively.

After the commencement of the commission by the defendant of the acts aforesaid your petitioner, by letter, twice requested that the said illegal acts might cease and it hoped and expected that the same would cease, until the court by its final decree herein should have definitely determined the rights of the respective parties hereto. And your petitioner would not now call the attention of the court thereto, had not your petitioner's requests passed unacknowledged and was not its business being absolutely destroyed, thereby.

Your petitioner further avers, as it is advised and believes that it was not the intention of this court to leave the question of the compensation to be paid by it, to the said de-

fendant, to the sole and arbitary decision of the said defendant, but to reserve to itself the sole and only right to judicially determine the same and that such question has been put in issue by the defendant in its answer herein in paragraphs 26, 27, 30, 31, 37 and 38 in the answer herein to which your petitioner refers, and that your petitioner has alredy taken and is now about to take evidence in relation thereto and without a full examination and cross-examination of witnesses having knowledge thereof this court cannot properly be judicially possessed of all the facts and circumstances which should be taken into consideration in determining the same and that such facts and circumstances upon such issue in the case cannot lawfully or properly be brought before the court by *ex-parte* affidavits, nor ought the court to be asked upon an interlocutory application to decide an issue which is properly only to be decided upon final hearing and by final decree.

Your petitioner further avers that precisely the same question of compensation arises and is to be decided in the suits in Indiana and Kentucky in said bill referred to, and in the said suit in the State of Kentucky the plaintiff has taken all its evidence in relation thereto, and that in both of said suits the defendants therein have been required to continue the business in the same manner and to receive the same compensation as had been done before said interference by defendant, and before said injunctions, and that the said plaintiffs are now continuing to pay precisely the same compensation to the railway defendants therein as they were paying at the time when the injunctions therein were respectively issued.

Your petitioner further avers as an evidence as well of the intent of this court, as of the other courts by which similar injunctions have been issued, that the question of compensation should be reserved until it could be decided fully upon the final hearing, that in the case in the Circuit Court of the United States for the District of Colorado, of *Dins-*

more as President of the Adams Express Co. v. *Denver and Rio Grande Railway Co.*, his honor, Judge Hallet stated in his opinion orally delivered at the time of granting an injunction therein and in answer to a question of counsel address thereto as follows:

"I wish to be understood that the matter of compensa-
" tion is open, I only intend to provide that the company
" shall pay at the rate they have been paying during the
" pendency of the suit or until the next term, leaving the
" matter of compensation open. If it should appear that
" you are entitled to more than you now get, we will give
" you more."

And under such decision the said Adams Express Co. has been paying at the rate theretofore paid by it.

And your petitioner further shows that the amount of $195 per day heretofore, and at the time of the commencement of this suit, paid by it, was a just and ample compensation to the defendant for all the express facilities afforded by it to your petitioner; and that such payment has been continuously made during the time covered by the contracts set forth in the bill herein and extended over a period from six to eight years, and that the defendant is not entitled under any aspect of the case to demand or receive, during the pendency of this suit, any increase of compensation for such facilities.

Your petitioner further avers that, at the time when the said two contracts were made, and during the period of six or eight years during which such payment of $195 per day was made, your petitioner was in the sole enjoyment of the conduct of the express business over the said defendant's lines, that shortly prior to the commencement of this suit in May last the said defendant commenced to do an express business over its lines, and is now daily engaged in the conduct thereof, and that thereby the quantity of express mat-
ter afforded to your petitioner for transportation has been

diminished, and by consequence the receipts of your petitioner therefrom lessened, and that such fact is proper to be called to the attention of the court in asking for relief in the premises.

Wherefore your petitioner demands, in aid of the injunction already issued herein, that the said defendant may be directed by the court to refrain, during the pendency of this litigation, from preventing or obstructing said plaintiff from continuing and carrying on its said business upon the cars of defendant in the same manner as the same had been done prior to said injunction, and from the further continuance of each and every of the acts aforesaid, or of any similar acts tending to interfere with the business of your petitioner, or its full enjoyment of express facilities on defendants lines, as contemplated by said original injunction.

And that your petitioner shall not be compelled or required, during the pendency of this action, to pay any other or larger sum as compensation for express facilities to be exercised and enjoyed by it than it was paying at the time this injunction was granted, and that your petitioner may have such other, or further, or different relief herein, as to the court may seem meet.

Your petitioner prays that a rule may issue in this cause to defendants to show cause, upon a day to be named by the court, why the prayer of your petitioner herein should not be granted.

S. M. BRECKINRIDGE,
GLOVER & SHEPLEY,
Solicitors for Complainant.

UNITED STATES OF AMERICA, } ss.
EASTERN DISTRICT OF MISSOURI. }

C. H. Albright, being duly sworn on his oath, states that he has read the above petition, and that the matters and things as therein stated, he believes to be true.

C. H. ALBRIGHT.

Subscribed and sworn to before me this 15th of October, 1880.

A. P. SELBY,
U. S. Commissioner, Eastern District of Missouri.

UNITED STATES OF AMERICA, } ss.
EASTERN DISTRICT OF MISSOURI. }

I have executed this writ by delivering to Thomas Allen, President of the within named St. Louis, Iron Mountain and Southern Railway Company, a copy of the within petition and rule to show cause at St. Louis, in said district, on the 16th day of October, A. D. 1880.

FELIX COSTE,
U. S. Marshal, Eastern District of Missouri.
By JAMES B. GEGGIE,
Deputy.

ANSWER TO PETITION PRAYING FOR A MODIFIED INJUNCTION.

The defendant, for answer to the plaintiff's petition praying that defendant be required to show cause why it should not be punished for contempt for violating the injunction heretofore issued, says it denies that the intention of the

court when granting said injunction was to leave the plaintiff in the enjoyment of the same facilities on the line of the defendant's road that it had enjoyed before the granting of said injunction, or that it was then enjoying, because by said petition, on which said injunction was granted, it appeared that said plaintiff was doing its business on said road under and by virtue of a contract which had been terminated by the parties; that what the court did say and intend, as the defendant is informed and believes, was that the plaintiff should have and enjoy the same facilities in the conduct of the express business permitted to any other express company, or exercised by the defendant itself, on payment by plaintiff of reasonable compensation therefor, which the defendant says was nothing more nor less, as it is informed and believes, than the law governing the case.

Defendant admits that by the contract set up in the plaintiff's original bill in this cause, certain facilities had been accorded to the plaintiff, among some of which were the right of plaintiff to put a messenger in charge of its safes, packing trunks and baggage, and its right to have such baggage carried on a passenger train, and that it might pay therefor, upon the 10th of each month for the business of the preceding month. Defendant says said rights were accorded to the plaintiff by reason of the terms of said contract, and that said contract had been terminated long prior to the filing of plaintiff's bill, and that plaintiff had and has only such rights as the law compels the defendant to grant to any other express company or shipper upon its line of road.

Defendant admits that under the two contracts set out by plaintiff's bill herein, it was to receive but one hundred and ninety-five ($195) dollars per day for the services it was to render under those contracts for the plaintiff, with the additional compensation for the excess over a given number of hundreds of pounds to be carried for the plaintiff, but defendant denies that said compensation was either reasonable or adequate, but was unreasonably small and inadequate,

for the services aforesaid, and therefore, cannot justly furnish any guide for determining what would now be reasonable compensation for said services, and the said terms having been made by a contract which no longer has any existence or force, cannot be properly pleaded or set up herein.

Defendant denies that since the granting of said injunction it has undertaken, or is now or has at any time or in any manner attempted, or endeavored, to defeat the same and to prevent the plaintiff from realizing any beneficial effects or protection therefrom.

Defendant denies that it has by any act or step, attempted to defeat the intention of the court in the issuance of said injunction, or to deprive the plaintiff of the use of the express facilities, or the profitable enjoyment thereof, accorded to every other person or to itself on the line of its railroad.

Defendant denies that it has defeated or violated the spirit and intention of said injunction by anything whatever done or suffered upon its part, or that it has virtually deprived the plaintiff of all benefits thereunder; but upon the contrary, avers that it has kept and observed, in the most strict faith the spirit and intention of the order of the court.

Defendant says it admits that after the granting of said injunction it made, as it is informed and believes it had a right to do, a list of charges to be paid for express services rendered by it to the plaintiff and all other persons alike using its road; that said list of prices and charges was much smaller than the list of charges theretofore demanded of the public by the plaintiff, and were in all respects reasonable and proper charges for such services, and that the same were purposely by the defendant put at such a rate as to include any and all services of whatever nature rendered by any person using the line of the defendant's road.

Defendant is not clear as to whether it understands the full meaning of the averment as to the "custody of its own messengers" and "at its own risk and in making personal

delivery thereof." If by the allegation under consideration, the plaintiff means to aver that it has been denied the right of custody of its own goods and packages and that its messengers have been deprived of the handling and possession of them, and that the delivery thereof has been taken away from it, then this defendant denies the same, and avers that the said express company has had the custody of its own property and had access to the cars by and through its own messengers; or, if the allegation means that these rights claimed by it have been usurped by the defendant, then the defendant denies each and every one of them.

Defendant denies that it ever has been asked or requested by the plaintiff to make any deduction for any service performed by it whatsoever for or on account of collecting or delivering freight to or from the road, but admits that it would have refused to allow any compensation therefor, because it denies the plaintiff's right thereto.

Defendant denies that it has refused at all, "utterly or otherwise," to transport the express matter of the public in charge of the plaintiff except upon the payment of compensation for accessorial service, although not in fact performed or accepted by it, and at and after their tariff rates aforesaid.

Defendant denies that any demand of or for a rebate for any kind of service performed in gathering or distributing freight has ever been made by the plaintiff upon it, and it denies that the plaintiff is entitled to any such consideration or compensation at its hands.

Defendant denies that it ever has demanded of plaintiff inspection of the contents of its express matter and denies that it ever refused to carry any of its express matter without inspection, except as hereinafter stated.

Defendant denies that it has refused to carry any express matter in the custody of the plaintiff, or by any act of its prevented or interfered with the plaintiff's performance of its duty to the owner of express matter entrusted to its care. Defendant states however that sometime in the forepart of July last it learned that the plaintiff was, for the first time in the use of its road, putting its express matter into boxes, trunks, safes and bags, and in this way shipping through over the line of the defendant articles of great value without rendering to the defendant any adequate compensation for the articles thus carried; that thereupon the defendant requested of the plaintiff to give the value and kind of articles, whether money or other goods, it was thus carrying, so that it might make a reasonable charge for the service it was performing; that the plaintiff upon one occasion refused and neglected, and persisted in such refusal and neglect, to give the defendant a list of the articles and the value thereof, defendant stating at the time to the agents of the plaintiff that it had no objection to carrying such articles, that defendant wanted to carry all the freight plaintiff could bring, but simply wanted to know the value of the articles it was carrying, so that it might regulate its reasonable charges thereon; but yet plaintiff refused, and persisted in its refusal, to furnish the list or the value of the articles then under consideration. Thereupon the defendant did set out of its car the boxes and bags containing the articles aforesaid, which the defendant says, it is informed and believes, it had a perfect right to do under the circumstances; that this is the only case of the sort; that since that time the plaintiff has furnished a list of the articles by it boxed and shipped and the value thereof so far as the defendant knows.

Defendant denies that it ever made the inspection of the articles brought to it for transportation by the plaintiff a condition upon which it would transport the same, and

denies each and every allegation thereof.

Defendant denies that it ever has, under any circumstances whatever, refused to transport anything of any kind for the plaintiff whenever the plaintiff brought it to be transported and would tell defendant what it was and the value of it.

Defendant denies that it ever demanded of the plaintiff to break its packages for the inspection of the agents of the defendant, but has simply asked plaintiff to furnish defendant a list of the articles and the value thereof.

Defendant denies that it has demanded, or is now demanding, an inspection of the contents of the packages of plaintiff, but avers that it has a right to know the contents thereof.

Defendant denies that it has, since the granting of the injunction for the first time, asserted its right to charge for each package irrespective of the weight thereof.

Defendant denies that it ever has ejected from its cars anything whatever belonging to the plaintiff, only in the case above stated, where the plaintiff refused to give a list of the articles or the value thereof.

Defendant says that after the granting of the injunction herein it did not demand prepayment for freight carried by it for the plaintiff for more than four weeks; that it presented its accounts from day to day for carrying the freight of the plaintiff and payment thereof was refused, and defendant so served the plaintiff until its bill amounted to more than the sum of six thousand ($6,000) dollars; that defendant then learned that said plaintiff was utterly insolvent, and had no means within the jurisdiction of this court or elsewhere out of which defendant could collect its bill for the services rendered to the plaintiff; that defendant thereupon demanded, after due notice to the plaintiff, prepayment for all the freight carried thereafter for it,

since which time defendant has, as it had a right to do, as it is informed and believes, demanded of the plaintiff prepayment for the services that defendant was rendering for it.

Defendant denies that it has ejected the plaintiff by force and without notice from offices on the line of its road that the plaintiff had for a long time previously occupied, and says the truth concerning this allegation is that defendant had no more room than was absolutely necessary for the safe, convenient and proper transaction of its own business, and so informed the plaintiff, and the plaintiff thereupon vacated the said rooms.

Defendant denies that it has charged the public less rates for express services than its said tariff rates, and less than it has charged the plaintiff.

Defendant admits that it has instructed its agents who had theretofore acted as the agents of the plaintiff, not to act any longer in its behalf, but says the facts are that the increase of its business demanded the entire time of its agents.

Defendant says that in charging the fare for the messengers it charged only the usual and reasonable rates for such services, which, it is informed and believes, it had a right under the law to charge, and it has gathered the same thing from the order of the court made herein granting the injunction.

Defendant denies that to divert custom from the plaintiff it has issued, or suffered to be issued, or caused or procured to be given out, any pass or passes to persons having express matter to be transported over the defendant's road, but that in all things it has conformed to the injunction herein, and transacted its business with reference to the plaintiff as it did with reference to everybody else.

Defendant denies that its rate of charges is either unreasonable or illegal, but says that the same is in all respects reasonable.

Defendant says it believes as a matter of course that express companies have certain rights which the court will protect.

Defendant denies that the plaintiff ever sent it any one or two letters as alleged in the bill.

In response to the allegation as to the advice the plaintiff has had as to what the court intended in reference to the question of compensation to be be paid by plaintiff, defendant says it has been advised and believes that the intention of the court is clearly expressed in its restraining order granted herein, where it says the defendant is to render to the plaintiff the services required upon payment by plaintiff of reasonable compensation therefor, which the defendant says is the only charge or demand it has made of the plaintiff for any services it has rendered or that it expects to render for the plaintiff.

Defendant does not claim or believe that it has the right to make an oppressive or unreasonable charge against the plaintiff, or any other person demanding like services of defendant.

Defendant admits that all disputes with reference to the tariff or charges involved in this litigation can only be determined at and by a final hearing upon full proof.

Defendant has no sufficient knowledge or information to enable it either to admit or deny what is in dispute in the bills in Indiana and Kentucky, referred to by the plaintiff, nor what the courts have decided thereon, nor what orders were made therein; nor has this defendant any sufficient knowledge to enable it to admit or deny the proceedings had in the case of Dinsmore, President of the Adams Express Company v. the Denver & Rio Grande Railroad Company, nor what was said in said suit by his honor, Judge Moses Hallett, nor what rate was paid to said railroad company for transportation by said express company; but this defendant denies that anything in said petition mentioned as having been done in the cases in Indiana, Kentucky or Colo-

rada is either authority or has binding force upon this court in this cause, and says that the same ought to be stricken out as frivolous.

Defendant denies that one hundred and ninety-five dollars ($195) per day for the service demanded of it by the plaintiff, is at all adequate or a just compensation; that since the said sum was fixed, which was done by contract between the parties, the express business on said road has multiplied more than ten fold, and what was fair compensation under said contract, would be absolutely unjust at the present time.

Defendant denies that by reason of its doing an express business the quantity of express matter offered to the plaintiff has been made less than what it was when said contracts were made, but avers that the increase of business along the line of its road has vastly increased the plaintiff's express business over what it was at the creation of said contracts, notwithstanding the fact that the defendant does an express business itself, which is owing to the vast increase of business, as aforesaid, along the line of defendant's road.

Defendant says that the thing sought to be done by the petition to which this is an answer, is to get this honorable court to readjudicate the question of compensation that the defendant is to charge plaintiff for carriage on defendant's road, and which question was provisionally settled by the court in its order granting the injunction aforesaid, and cannot now be reopened in the manner sought by plaintiff, as defendant is informed and believes.

THOROUGHMAN & PIKE,
Solicitors for Defendant.

A. W. Soper, general superintendent of defendant, makes oath and says that he has read the foregoing answer and knows the contents thereof, and that the matters therein as stated are true of his own knowledge, except those facts

stated upon information and belief, and these he believes to be true.

A. W. SOPER.

Subscribed and sworn to before me, this 25th October, A. D. 1880.

[SEAL.] L. L. WALBRIDGE,
Notary Public, City of St. Louis.

Subscribed and sworn to before me, as interlined, this 25th day of October, A. D. 1880.

A. P. SELBY,
U. S. Commissioner.

MODIFIED INJUNCTION.

The petition of the plaintiff for a modification of the provisional order of injunction heretofore made having been presented to the court, together with the answer thereto, and the affidavits and counter affidavits, and the respective solicitors having been fully heard in the premises, it is ordered that the provisional injunction heretofore made in this case be modified so that the same may read as follows:

The defendants, its agents, employees, and servants, are hereby enjoined, until the final determination of this suit, from preventing the plaintiff from enjoying equal facilities in the conduct of its express business with those permitted to other express companies, or exercised by the defendant itself with respect to said business, on payment by the plaintiff of reasonable compensation for such services as may be rendered in this behalf by the defendants. And it is further ordered that the defendant be enjoined from in-

cluding, under the term 'reasonable compensation,' any accessorial charges, and from making any discrimination against the plaintiff for return of empty kegs or packages, and from charging the plaintiff higher rates of freight than are charged against other express companies, and than it exacts for the service of its own express department—the said rates as to the plaintiff not to exceed those now established by the defendant for like services of other parties, or for the conduct of its own express department. It is further ordered that the defendant be enjoined from preventing the transportation of express matter by the plaintiff over defendant's roads, and from requiring, as a pre-requisite or condition for such transportation, the listing or disclosure by the plaintiff of the contents of the packages by the plaintiff presented to the defendant for transportation, and from preventing the messengers of the plaintiff, on payment of the passenger fare, from like accommodations for the care and custody of plaintiff's shipments, as are accorded to messengers of other express companies, or the agents, servants, or employees of the defendant engaged in like service.

OPINION OF JUDGE MILLER.

IN THE CIRCUIT COURT OF THE UNITED STATES.

Eighth Circuit.

William B. Dinsmore, Pres. Adams Express Co., &c., *vs.* The Missouri, Kansas & Texas Railway Co.	*District of Kansas.*
Same *vs.* The Atchison, Topeka & Santa Fe Railroad Co.	*District of Kansas.*
Same *vs.* The Denver & Rio Grande Railway Company.	*District of Colorado.*
The Southern Express Co. *vs.* The St. Louis, Iron Mountain & Southern Railway Co.	*Eastern District of Missouri.*
The Southern Express Co. *vs.* The Memphis & Little Rock Railroad Company.	*Eastern District of Arkansas.*

Miller, Circuit Justice:

In these cases, argued before me at St. Louis, with Judges McCrary and Treat, I can do no more than present

certain general conclusions at which my mind has arrived in regard to the propositions argued by counsel:

1. I am of the opinion that what is known as the express business is a branch of the carrying trade that has, by the necessities of commerce and the usages of those engaged in transportation, become known and recognized.

That while it is not possible to give a definition in terms which will embrace all the classes of articles so usually carried, and to define it with precision by words of exclusion, the general character of the business is sufficiently known and recognized as to require the court to take notice of it as distinct from the transportation of the large mass of freight usually carried on steamboats and railroads.

That the object of this express business is to carry small and valuable packages rapidly, in such a manner as not to subject them to the danger of loss and damage, which, to a greater or less degree, attends the transportation of heavy or bulky articles of commerce, as grain, flour, iron, ordinary merchandise and the like.

2. It has become law and usage, and is one of the necessities of this business, that these packages should be in the immediate charge of an agent or messenger of the person or company engaged in it, and to refuse permission to this agent to accompany these packages on steamboats or railroads on which they are carried, and to deny them the right to the control of them while so carried, is destructive of the business and of the rights which the public have to the use of the railroads in this class of transportation.

3. I am of the opinion that when express matter is so confided to the charge of an agent or messenger, the railroad company is no longer liable to all the obligations of a common carrier, but that when loss or injury occurs, the liability depends upon the exercise of due care, skill and diligence on the part of the railroad company.

4. That under these circumstances, there does not exist on the part of the railroad company the right to open and inspect all packages so carried, especially when they have been duly closed or sealed up by their owners or by the express carrier.

5. I am of the opinion that it is the duty of every railroad company to provide such conveyance by special cars, or otherwise, attached to their freight or passenger trains, as are required for the safe and proper transportation of this express matter on their roads, and that the use of these facilities should be extended on equal terms to all who are actually and usually engaged in the express business.

If the number of persons claiming the right to engage in this business at the same time, on the same road, should become oppressive, other considerations might prevail; but until such a state of affairs is shown to be actually in existence in good faith, it is unnecessary to consider it.

6. This express matter and the person in charge of it should be carried by the railroad company at fair and reasonable rates of compensation; and where the parties concerned cannot agree upon what that is, it is a question for the courts to decide.

7. I am of the opinion that a court of equity, in a case properly made out, has the authority to compel the railroad companies to carry this express matter, and to perform the duties in that repect which I have already indicated, and to make such orders and decrees, and to enforce them by the ordinary methods in use necessary to that end.

8. While I doubt the right of the court to fix in advance the precise rates which the express companies shall pay and the railroad company shall accept, I have no doubt of its right to compel the performance of the service by the railroad company, and after it is rendered, to ascertain the reasonable compensation and compel its payment.

9. To permit the railway company to fix upon a rate of compensation which is absolute, and insist upon the payment in advance or at the end of every train, would be to enable them to defeat the just rights of the express companies, to destroy their business, and would be a practical denial of justice.

10. To avoid this difficulty, I think that the court can assume that the rates, or other mode of compensation heretofore existing between any such companies, are *prima facie* reasonable and just, and can require the parties to conform to it as the business progresses, with the right to either party to keep and present an account of the business to the court at stated intervals, and claim an addition to, or rebate from, the amount so paid.

And to secure the railroad companies in any sum which may be thus found due them, a bond from the express company may be required in advance.

11. When no such arrangement has heretofore been in existence, it is competent for the court to devise some mode of compensation to be paid as the business progresses, with like power of final revision on evidence, reference to master, &c.

12. I am of opinion that neither the statutes, nor constitutions of Arkansas or Missouri, were intended to affect the right asserted in these cases; nor do they present any obstacle to such decrees as may enforce the rights of the express companies.

DECREE.

It is by the Court ordered, adjudged and decreed, as follows:

I.—That the express business, as fully described and shown in the record, is a branch of the carrying trade that has, by the necessities of commerce and the usages of those engaged in transportation, became known and recognized so as to require the Court to take notice of the same as distinct from the ordinary transportation of the large mass of freight usually carried on steamboats and railroads.

II.—That it has become the law and usage, and is one of the necessities of the express business, that the property confided to an express company for transportation should be kept while in transit in the immediate charge of the messenger or agent of such express company.

III.—That to refuse permission to such messengers or agents to accompany such property on the steamboats or railroads on which it has to be carried, and to deny them the right to the custody of the property while so carried, would be destructive of the express business and of the rights which the public have to the use of such steamboats and railroads for the transportation of such property so under the control of such messengers or agents.

IV. That the defendant, its officers, agents and servants have no right to open or inspect any of the packages or express matter which may be offered to it for transportation by the plaintiff's company, or to demand a knowledge of the contents thereof, nor to refuse transportation thereof unless such inspection be granted or such knowledge be afforded.

V. That it is the duty of the defendant to carry the express matter of the plaintiff's company, and the messengers or agents in charge thereof, at a just and reasonable rate of compensation, and that such rate of compensation is to be found and established as a unit, and is to include as well

the transportation of such messengers or agents as of the express matter in their custody and under their control.

VI.—That on and subsequent to the first day of April, 1878, the said defendant afforded to the said plaintiff all the facilities needed by it for the conduct of its express business over the defendant's lines, and such as were specifically provided for in the contracts in the bill herein set forth; that thereafter the defendant notified the plaintiff that such facilities would be withdrawn; and that it was the intention and purpose of the defendant to exclude the plaintiff's company from its lines on and after the 25th day of May, 1880; that such intention and purpose were restrained by the preliminary injunction order of the Court, which said injunction order was afterwards modified, as appears in the record.

VII.—That it is the duty of the defendant to afford to the plaintiff all express facilities, and to the same extent, and upon the same trains that said defendant accord to itself or to any other company or corporation engaged in the conduct of an express business on the defendant's lines, and to afford the same facilities to plaintiff on all its passenger trains.

VIII.—That the plaintiff keep and render monthly a true account of the services performed for it by the defendant, and to pay therefor at the rate hereinafter specified on or before the 15th of each month after the date hereof for the business of the month preceding, and that the defendant has no right to require prepayment for said express facilities, or payment thereof at the end of every train or in any other manner than as is hereinafter provided; and that plaintiff execute and deliver to the defendant a bond in the sum of one hundred and fifty thousand dollars ($150,000), conditioned well and faithfully to make such payments as is

herein provided, and with surety to be approved by a judge of the court.

IX.—That it is and was the duty of the said defendant to afford and to have afforded such facilities to the plaintiff herein specified for a just and reasonable compensation.

X.—Whereas, it is alleged by complainant that since the commencement of this suit, and the service of the preliminary order of injunction herein, the defendant has, in violation of said injunction and of the rights of complainant, made unjust discriminations against complainant, and has charged complainant unjust and unreasonable rates for carrying express matter, therefore it is ordered that complainant have leave hereafter to apply for an investigation of these and similar allegations, and for such order with respect thereto as the facts, when ascertained, may justify, and for the appointment of a Master to take proof and report thereon.

XI.—That the defendant, its officers, agents, servants and employees, and all persons acting under their authority, be, and they hereby are, permanently and perpetually enjoined and restrained from interfering with or disturbing in any manner the enjoyment by the plaintiff of the facilities provided for in this decree, to be accorded to it by the said defendant upon its lines of railway, or such as have been heretofore accorded to it for the transaction of the business of the plaintiff and of the express business of the public confided to its care, and from interfering with any of the express matter or messengers of the plaintiff, and from excluding or ejecting any of its express matter or messengers from the depots, trains, cars, or lines of the said defendant as the same are by this decree directed to be permitted to be enjoyed and occupied by the said plaintiff, and from refusing to receive and transport in like manner as the

said defendant is now transporting, or as it may hereafter transport for itself or for any other express company over its lines of railway, the express matter and messengers of the said plaintiff, and from interfering with or disturbing the business of the said plaintiff in any manner whatsoever; the said plaintiff paying for the services performed by it for the defendant, monthly as herein prescribed, at a rate not exceeding fifty per centum more than its prescribed rates, for the transportation of ordinary freight, and not exceeding the rate at which it may itself transport express matter on its own account, or for any other express or other corporation, or for private individuals; reserving to either party a right at any time hereafter to apply to this court, according to the rules in equity proceedings, for a modification of this decree as to the measure of compensation herein prescribed.

It is further ordered, adjudged and decreed, that the defendant pay the costs to be taxed herein, and that an execution or a fee bill issue therefor."

PETITION FOR APPOINTMENT OF MASTER.

At the same March Term of 1882, to-wit, on the 3d day of June, 1882, the Express Company, as appears by the certified copy herewith filed, presented its petition to the said Circuit Court in the words and figures following, to-wit:

"In the Circuit Court of the United States, Eastern District of Missouri.—In Equity—March Term, 1882.—The Southern Express Company, a corporation and a citizen of the State of Georgia, complainant, v. The St. Louis, Iron Mountain and Southern Railway Company, a corporation and a citizen of the State of Missouri, defendant.

In the matter of the reference authorized by the decree of the Court in the above-mentioned cause, entered at the

present Term of the Court, and on the 25th day of March, 1882.

To the Hon. Judges of the Circuit Court of the United States, for the Eastern District of Missouri. In Equity:

(1.) The said Southern Express Company, your petitioner, respectfully states that it was, and is, the plaintiff in the above entitled cause, and filed its original bill therein on the 21st day of May, 1880.

(2.) That in and by said bill it averred and set forth its existence as a corporation and citizen of the State of Georgia, and the existence of the defendant as a corporation and a citizen of the State of Missouri, and that both said plaintiff and defendant were common carriers, as particularly mentioned in said bill, which is here referred to as part of this petition.

(3.) That in said bill it was stated that plaintiff had, for several years previous to the filing thereof, enjoyed the privileges and franchises of its charter as an express carrier over the road of defendant, and desired a continuance of such enjoyment.

(4.) But that the said defendant had notified plaintiff that after May 26th, 1880, it should not continue its business on said road.

(5.) That afterwards, May 15th, 1880, the defendant notified your petitioner that it had "determined to transport all express matter and transact all express business over said road itself, and on its own account, and by and through its own officers and agents, on and after the first day of June, 1880."

(6.) And said plaintiff, in its said bill, further stated it was informed and believed, that the said Railroad Com-

pany intended to exclude it and its express safes and messengers from said railroad, and refuse to accord it, after said June 1st, 1880, any facilities or accommodations for its express business, and that such exclusion would take place unless restrained by order of the Court; and that if it did take place the plaintiff's business over said railroad would be not only irreparably injured, but absolutely destroyed; that its customers and patrons would be lost, its good will and investment rendered worthless, and its ability to keep its contracts with other railway and express companies terminated, and its usefulness to the public, as its servant, destroyed.

(7.) That the plaintiff averred further in its said bill that it was its daily custom to make, with its own horses and wagons and drivers, for whose fidelity it was responsible, all the collections and deliveries of express freight as between the public and the railroad of defendant, which the public could not conveniently make on its behalf, and did not require from defendant, and for which the defendant had no lawful right to charge.

(8.) And said plaintiff further averred in its said bill, that it was lawfully entitled to demand and receive from defendant the same facilities and accommodations for transacting the express business over its lines, as might be accorded by defendant to itself, and to have its express matter transported by defendant at rates or tolls specifically provided by law and the charter of defendant and the Railroad Commissioners, and on the same trains, and with like accommodations at the depots and stations, which defendant might accord to itself in the transportation of express matter by it, and for reasonable compensation. And in the event that defendant should, during the pendency of said suit, or afterwards, undertake to do an express business of its own, it should deduct from charges made by it for trans-

portation of express matter for the plaintiff, a just and reasonable compensation for the accessorial service rendered by plaintiff beyond and off the lines of said railroad in the collection of goods from shippers or consignors, and delivering to consignees, by means of horses and wagons, etc., and which service the plaintiff did not need or require to be done by defendant, but performed for itself. And said plaintiff offered in said bill to pay to defendant, lawful and reasonable rates in its business, and to comply with all reasonable rules of defendant in that behalf.

(9.) And in said bill the plaintiff prayed the court to enjoin the defendant, its officers, agents, servants and employees, until the further order of the court, from interfering with or disturbing the enjoyment by plaintiff of the facilities then accorded to it in the transaction of its business; from interfering with any of plaintiff's express matter or messengers; from excluding or ejecting any of its express matter or messengers from the depots, cars or lines of defendant's road, then enjoyed and occupied by it; from refusing to receive and transport plaintiff's express matter and messengers, as it was then doing, and from disturbing the existing business relations between said plaintiff and defendant.

(10.) That on the hearing of the plaintiff's motion for a preliminary injunction therein, the court, after argument for defendant as well as plaintiff, did then and there "order that the defendant, its officers, agents, servants and employees be enjoined and restrained until the final determination of said cause, from preventing the plaintiff's enjoying the same facilities in the conduct of its express business permitted to any other express company, or exercised by the defendant itself, on payment, by plaintiff, of reasonable compensation therefor." And defendant then and there had notice thereof.

(11.) That afterwards, on the 21st day of July, 1880, the said defendant filed its answer to said bill, and thereby denied that it was its duty to accord to plaintiff any facilities previously allowed to it on its passenger trains, or at its stations or depots, or such facilities as it accorded to itself; claimed an exclusive right in itself to do all express business over its road, and to exclude plaintiff and all other express carriers from its road, and a right to charge and collect any rate it saw fit; denied that it was bound to receive and transfer freights and passengers from connecting or intersecting railroads; denied that it was bound to make a reasonable deduction for service rendered by the plaintiff and not by itself, to shipments off of its road, from its charge against like shipments when it rendered the same service; and denied the right of plaintiff to have any space on its cars for carrying its express matter, or to carry such matter in the charge of plaintiff's employees, or to have its messengers ride in defendant's cars in charge of its express matter.

(12.) That afterwards, on the ——— day of ——— the plaintiff filed its general replication to said answer, and afterwards the said parties took and placed on file a large amount of testimony therein, both oral and written, to be read on the hearing thereof.

(13.) That, on November 6th, 1880, the court, on the motion of plaintiff, modified the said preliminary injunction so as to read as follows (being the same order of the 6th of November, hereinbefore set forth.)

(14.) Your petitioner further states that afterwards — viz: March 25th, 1882—such proceedings were had in said cause that the same came on to be heard, and was heard, and thereupon the court entered therein its decree, in the words and figures following, viz: (being the same decree of the 25th March, 1882, hereinbefore set forth.)

All of which, among other things therein, reference being had to the record and proceedings in said cause, will more fully and at large appear.

(15.) Your petitioner now here respectfully prays the court to grant to it the benefit of the reference authorized by sections V. and X. of said decree so entered in said cause, March 25th, 1882.

(16.) Your petitioner respectfully states, that after the making of said orders of injunction by the court, and notice thereof to the defendant, and during the pendency of said bill, the said defendant refused to carry any express matter of said plaintiff on its railroad cars and trains, at a just and reasonable or legal rate of compensation therefor, but demanded and exacted from plaintiff, and required it to pay as a condition precedent to such transportation, excessive, exorbitant, unreasonable and illegal rates; and plaintiff did pay such excessive, exorbitant, unreasonable and illegal rates, to its great wrong and injury.

(2.) That during the whole period last mentioned the said defendant refused to carry the plaintiff's messengers in charge of its express matter on its railway cars and trains at a just and reasonable or legal rate of compensation; but demanded and exacted from the plaintiff, and compelled plaintiff to pay, and plaintiff did pay, as a precedent condition to the transportation of such messengers in charge of plaintiff's express matter, excessive, exorbitant, unreasonable and illegal rates of compensation therefor, to its great wrong and injury.

(3.) That during the whole period aforesaid, the said defendant discriminated against the plaintiff in respect to its charges for transportation of the plaintiff's messengers in charge of its express matter on defendant's railway cars

and trains, denying to plaintiff's messengers the same accommodations extended by it to its own messengers and to others, charging plaintiff for the transportation of its messengers as aforesaid, higher rates for transportation than it charged its own and others, and compelled plaintiff to pay the same as a precedent condition of such transportation, to its great wrong and injury.

(4.) That during the whole period aforesaid, the defendant unjustly discriminated against plaintiff in this; that it carried express matter for itself and others at less rates than it demanded from plaintiff, and compelled plaintiff to pay, for like service, to its great wrong and injury.

(5.) That during the whole period aforesaid, the said defendant unjustly descriminated against the plaintiff in this: that it included in its charges against plaintiff for transportation of its express matter, and compelled the plaintiff to pay to it, compensation for accessorial service to shipments of express matter off and beyond its railroad cars and trains, not rendered by defendant, but in fact rendered by plaintiff, and just as if defendant had rendered said service, to the great wrong and injury of the plaintiff.

(6.) Your petitioner states that from and after the—— day of——, 1881, and down to March 25th, 1882, the defendant unjustly discriminated against the plaintiff in this: that it refused to allow plaintiff to do its express business over all its trains and express cars, and suffered the plaintiff to do its business only on some of its trains and express cars, thereby putting the plaintiff's express matter twelve hours or more behind the defendant's express matter and that forwarded by it for other persons, thereby driving plaintiff's customers away from it, destroying the good will and favor of the public for plaintiff, and in so far destroying plaintiff's business, to the great wrong and injury of plaintiff.

(7.) That during the whole period from the granting of said injunction and notice thereof to defendant down to the 25th of March, 1882, defendant unjustly discriminated against the plaintiff in this: that it charged plaintiff, and compelled it to pay, as a precedent condition to transportation of its express matter, a greater amount on shipments for a less diftance than it exacted and collected for the transportation of the same class and quantity of goods from plaintiff and others for a greater distance, and compelled the plaintiff to pay the said unreasonable and illegal charges, to its great wrong and injury.

(8.) That during the whole period last mentioned the said defendant unjustly discriminated against the plaintiff in this: that it charged plaintiff, and compelled it to pay, a greater amount as compensation for transportation of plaintiff's express matter over portions of its road, than it charged and compelled plaintiff and others to pay for transportation of similar quantities of the same class of express matter over other portions of its road of equal distance, to the great wrong and injury of plaintiff.

(9.) That said defendant, in all and each of the wrongs and injuries above mentioned, disobeyed and violated the injunctions of the Court in that behalf, in contempt of the authority of the Court and to the great wrong and injury of the plaintiff.

(10.) And in conformity to the terms of said decree, your petitioner respectfully prays that it be referred to a master in chancery to be appointed *pro hac vice* in this particular case, to investigate, examine and report to the Court as provided in said decree and by the rules of the Court what is now and has been since the filing of the said plaintiff's bill, a reasonable rate of compensation to be paid to said defendant by plaintiff for transporting plaintiff's express matter, and messengers in custody and charge thereof,

on the railway trains and cars of defendant, and affording to plaintiff all necessary and reasonable facilities and accommodations for conducting its business in that behalf; the same to be found and established as a unit, including transportation and accommodation for both the express freights and messengers of plaintiff, as aforesaid.

Also to investigate, examine and report, as aforesaid, as to the allegations of wrong and injury aforesaid, and for the purposes aforesaid to use all evidence taken heretofore in said cause and on file therein, both oral and written, and to re-examine the same witnesses, if necessary, and any other witnesses to be produced by the parties, and to conduct the proceedings before him at such times and places as he may designate; and to state an account of the express business conducted by plaintiff over defendant's lines from the filing of plaintiff's said bill to the 25th day of March, 1882; and what amount the plaintiff has paid to the defendant on account of transportation of its express matter and messengers, and accommodations extended to it by defendant during the time last-named, and what amount, if any, has been paid to defendant in that behalf in excess of a reasonable and legal compensation therefor; and what damages the plaintiff has sustained by the wrongs and injuries as aforesaid alleged, and to report to the court all the evidence received by the said master, and all his actings and doings, and, as in duty bound, your petitioner will ever pray.

F. E. WHITFIELD,
GLOVER & SHEPLEY,
S. M. BRECKINRIDGE,
Solicitors for Plaintiff.

C. A. SEWARD,
of Counsel.

In the Circuit Court of the United States, for the Eastern District of Missouri, In Equity, Southern Express Company, plaintiff, v. St. Louis, Iron Mountain and Southern Railway Company, respondent, United States of America, Eastern District of Missouri, sict.:

And now at this day comes Calvin H. Albright, who on his oath states that he was agent of the Southern Express Company for several years immediately preceding January 15, 1882, and since that time to the present time he has been route agent of said Southern Express Company, and now is such route agent; that he has read the annexed petiton of said Southern Express Company, and on his own knowledge the statements in said petition are true in almost the whole scope and extent thereof, and that all said statements are true on information and belief of this affiant, and further saith not.

C. H. ALBRIGHT.

Subscribed and sworn to before me, this 15th day of May, 1882.

[L. S.] VIRGIL M. HARRIS,
Notary Public.

UNITED STATES OF AMERICA, *Eastern District of Missouri*. } ss.

I, M. M. PRICE, Clerk of the Circuit Court of the United States, in and for the Eastern District of Missouri, do hereby certify the writing hereto attached to be a true copy of petition for appointment of Master *pro hac vice*, in case No, 1667, of Southern Express Company plaintiff, against St. Louis, Iron Mountain and Southern Railway Company, defendant, as fully as the same remains on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office in the City [L. S.] of St. Louis, in said district, this 12th day of October, in the year of our Lord eighteen hundred and eighty-two.

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY,
Deputy.

ORDER APPOINTING MASTER.

UNITED STATES OF AMERICA, } ss.
EASTERN DISTRICT OF MISSOURI. }

IN THE CIRCUIT COURT OF THE UNITED STATES,

IN AND FOR THE EASTERN DISTRICT OF MISSOURI.

Be it remembered that on the 5th day of June, A. D. 1882, at a regular stated term of said court, the following, among other proceedings, were had and appear of record, to-wit:

SOUTHERN EXPRESS COMPANY, ... *Plaintiffs,*

vs.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, ... *Defendants.*

Now, at this day come the parties, and the petition of the plaintiff filed herein June 3d, 1882, having been fully considered by the court, it is ordered that there be referred to George H. Shields, Esq., as Master *pro hac vice*, to investi-

gate, examine and report to the court under said decree of March 25th, 1882, pursuant to the rules of the court in such cases provided.

First.—What was, during the period between the injunction order herein of June 1st, 1880, and the 25th day of March, 1882, the rate actually enforced by the defendant against plaintiff for carrying its express freight over such portion of its line as the said plaintiff was allowed to send its express freight over, and what price in addition thereto, if any, it charged for the fares of messengers in charge of said freight, and state an account showing said rates and fares, between said dates, and the amount thereof, respectively.

Second.—What were the statutory rates for carriage of ordinary freights by said defendant during said period, and state an account of the same as applied to the express freight transported by defendant for said plaintiff during said period, as if the same were ordinary freights.

Third.—What was, during the same period, a reasonable compensation to be paid by plaintiff to the defendant for allowing plaintiff all reasonable and proper facilities for conducting plaintiff's business over defendant's road, cars and lines; the same to be found as a unit, including compensation for the transportation both of plaintiff's express matter and messengers in the custody and control thereof; also what amount during the same period the plaintiff was required to pay, and has paid to the defendant in that behalf; and if the amount so paid by plaintiff has exceeded such reasonable compensation to state an account thereof.

Fourth.—Whether, during said period, defendant included in its charges for transportation of express matter for plaintiff, charges also for accessorial service not performed by said defendant but performed by plaintiff for itself.

Under the term 'accessorial' service, as herein used, the Master will include only the costs and expenses of collecting and delivering express matter to the respective railroad depots or stations for transportation by defendant on its road and cars, and of delivering such express matter on the arrival of the same at the place of destination to the consignees there of at any other place than at its depots or stations, respectively.

Fifth.—Whether, during the period aforesaid, the defendant required plaintiff to pay, and plaintiff paid, for transportation of its messengers in custody of its express matter other than usual passenger fares; and whether, during the same period, defendant has discriminated against plaintiff by transporting express messengers other than plaintiff's at less rates than it compelled plaintiff to pay, and if so, to state an account of the excess paid by plaintiff over either of said rates.

Sixth.—And whether during the same period defendant discriminated against plaintiff by charging and compelling plaintiff to pay for transportation of its express matter, higher rates and greater amounts than it charged others for the same and similar services; and if so, to state an account of the amount of money by means of such discrimination so paid or required to be paid by plaintiff above the rates so allowed to others than plaintiff for such service.

Seventh.—Whether, during the period aforesaid, the defendant discriminated against plaintiff by refusing to allow plaintiff to conduct its business on any of defendant's lines, trains and express cars in use during said period, on which defendants and others conducted express business while plaintiff was so excluded, and whether by such exclusion of plaintiff and its business its express matter and messengers were hindered and delayed, and plaintiff was thereby

prevented from competing with defendant and others conducting express business over said lines; and if so, what damages, if any, were sustained by plaintiff in its business, and state an account thereof.

Eighth.— It is further ordered that, for the purposes of the reference hereby directed, the master is to use all evidence on file in this cause, and any other produced by the parties, and re-examine the same witnesses, if necessary, and any other witnesses produced by the parties, and conduct the proceedings before him at such time and places as he may designate, on due notice to the respective parties, and report his findings and all the evidence taken before him.